BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ROXANA LANDFILL, INC. Petitioner, vs. VILLAGE BOARD OF THE VILLAGE OF CASEYVILLE, ILLINOIS; VILLAGE OF CASEVILLE, ILLINOIS; and CASEYVILLE TRANSFER STATION, L.L.C. Respondents.	)	No. PCB 15-65 consolidated with PCB 15-69 (Pollution Control Facility Siting Application)
VILLAGE OF FAIRMONT CITY, ILLINOIS, Petitioner, vs. VILLAGE OF CASEYVILLE, ILLINOIS BOARD OF TRUSTEES and CASEYVILLE TRANSFER STATION, LILAC. Respondents.	)	

NOTICE OF FILING

TO:

J. Brian Minion Weilmuenster Law Group, P.C. 3201 West Main Street Belleville IL 62226 *(jbm@weilmuensterlaw.com)*	Donald J. Moran Pedersen & Houpt 161 N. Clark Street, Ste 2700 Chicago, Illinois 60601 *(dmoran@pedersenhoupt.com)*	Robert J. Sprague Sprague & Urbana 26 E. Washington Street Belleville, Illinois 62220 *rsprague@spragueurban.com*
Hearing Officer Carol Webb *(Carol.Webb@illinois.gov)*	Penni S. Livingston 5701 Perrin Rd. Fairview Heights, IL 62208 *(penni@livingstonlaw.biz)*	

PLEASE TAKE NOTICE that on January 22, 2015, we filed electronically with the Illinois Pollution Control Board, (1) this Notice of Filing and (2), the attached **Petitioner Roxana Landfill, Inc.'s Motion for Reconsideration & Joinder in Petitioner Village of Fairmont City's Motion for Reconsideration**, a copy of each is attached and electronically served upon you.

Dated: January 22, 2015

PETITIONER ROXANA LANDFILL, INC.

Jennifer J. Sackett Pohlenz
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By: _____
One of its attorneys

PROOF OF SERVICE

I, Jennifer J. Sackett Pohlenz an attorney, certify[1] that I served the above referenced documents on the persons identified above by e-mail, at the email addresses listed, before 5:00 p.m. on this 22nd day of January 2015.

_____

[1] Under penalties as provided by law pursuant to Illinois Rev. Stat. Chap. 110-, Sec. 1-109, I do certify that the statements set forth herein are true and correct.

ROXANA LANDFILL, INC. Petitioner, vs. VILLAGE BOARD OF THE VILLAGE OF CASEYVILLE, ILLINOIS; VILLAGE OF CASEVILLE, ILLINOIS; and CASEYVILLE TRANSFER STATION, L.L.C. Respondents.	)	No. PCB 15-65 consolidated with PCB 15-69 (Pollution Control Facility Siting Application)
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PETITIONER ROXANA LANDFILL, INC.'S MOTION FOR RECONSIDERATION & JOINDER IN PETITIONER VILLAGE OF FAIRMONT CITY'S MOTION FOR RECONSIDERATION

Now comes Petitioner Roxana Landfill, Inc. ("Roxana"), by and through one of its attorneys, Jennifer J. Sackett Pohlenz at Clark Hill PLC, pursuant to Sections 101.520 and 101.902 of the Pollution Control Board ("Board") Procedural Rules, and for its Motion for Reconsideration & Joinder in Petitioner Village of Fairmont City's Motion for Reconsideration ("Motion") of the Board's December 18, 2014, Opinion and Order ("Opinion") in the above captioned, consolidated, matter, states as follows:

A. INTRODUCTION

Respectfully, the Board's Opinion in this matter (attached as **Exhibit A**) is in error, as it contradicts the plain language of Section 39.2 of the Illinois Environmental Protection Act ("Act"). While the focus of this Motion is statutory construction, Roxana reserves for appeal all arguments it has raised in the proceedings to date and joins in the Village of Fairmont City's Motion for Reconsideration as if it was repeated in this Motion

The Board's Opinion changes the wording and intent of the Illinois General Assembly in Section 39.2 of the Act The Board has no authority to change the language of the Act and should grant this Motion and reconsider its Opinion and Order to correct that error.

B. ARGUMENT

The Board should reconsider its Opinion and reverse the decision by the Village of Caseyville, as the Board erred in applying Section 39.2 of the Act: ***(1)*** requiring only "submittal" of a siting application to a local government rather than "receipt"; and ***(2)*** not requiring testimony to be presented by Caseyville Transfer Station, LLC ("CTS") at the public hearing. These errors, once corrected, result in the necessary reversal of the Village of Caseyville's decision granting siting approval to CTS, as ***(1)*** there is no evidence CTS's siting application was received by the Village of Caseyville on February 10, 2014, the date contained in CTS's pre-filing notice; and ***(2)*** CTS cannot meet its *prima facie* case without testimony. Thus, any decision approving CTS's siting request is against the manifest weight of the evidence.

A fundamental tenet of statutory construction requires courts to ascertain and give effect to the legislature's intent. *Barnett v. Zion Park District*, 171 Ill. 2d 378, 389, 665 N.E.2d 808, 813 (1996)(citation omitted).

> "We seek the legislative intent primarily from the language used in [the Act]. We evaluate the Act as a whole; we construe each provision in connection with every other section. If we can ascertain the legislative intent from the plain language of the Act itself, that intent must prevail and we will give it effect without resorting to other interpretive aide. We must not depart from the plain language of the Act by reading into it exceptions, limitations or conditions that conflict with the express legislative intent." *Id.*

The Board, in error, departed from this tenet of statutory construction.

(1) Section 39.2 of the Act Requires Timely Receipt of a Siting Application by a Local Government for Jurisdiction to Vest

The Act provides as follows:

> No later than 14 days before the date on which the county board or governing body of the municipality ***receives*** a request for site approval. . . (415 ILCS 5/39.2(b))(emphasis added).
>
> An applicant shall ***file*** a copy of its request with the county board of the county or the governing body of the municipality in which the proposed site is located. (415 ILCS 5/39.2(c))(emphasis added).

The legislature's intent, as read from the plain language of Sections 39.2(b) and (c), is that jurisdiction vests with a local government, if all notice provisions are properly followed, when the siting application is ***filed*** by the siting applicant and ***received*** by the local government. "Filed" and "received" mean essentially the same thing: when a document is deposited with and passes into the exclusive control and custody of the Village Clerk.

For example, the Illinois Supreme Court in *Gietl v. Commissioners of Drainage District No. 1*, 384 Ill. 499, 501-02, 51 N.E.2d 512 (S. Ct. 1943), held that a document is considered "filed with the town clerk" and "deposited with the clerk of the drainage district" (as those were the terms used in the statute it was reviewing) when it is "deposited with and passes into the exclusive control and custody of the clerk, who understandingly receives the same in order that it may become a part of the permanent records of his office."

Likewise, in *Wilkins v. Dellenback*, 149 Ill. App. 3d 549, 554, 500 N.E.2d 692, 695 (2 Dist 1986), the Illinois Appellate Court found that the filing date for a petition for review in circuit court is when the petition is received and stamped by the clerk's office.

Public policy also supports the rule that when the government clerk receives something is the trigger for its filing (unless otherwise provided for by rule). Relying, instead, on when a person asserts to have submitted something to a government clerk, without that clerk having any

evidence of receipt, creates a rule of law that potentially puts a government at risk of legal consequence without it having been in custody or knowingly in custody of the document creating that consequence. For example, in Section 39.2(e), if a siting application is not acted on by a local government, an applicant may deem it approved.

By the Board holding that "based on evidence in the record, the Application was ***submitted*** to the Village on February 10, 2014. . ." the Board is creating a rule of law that is inconsistent with the plain language of the Act and Illinois case law, contrary to the plain meaning of the words "filed" and "received," and inconsistent with public policy. (Opinion and Order p. 17)(emphasis added).

Moreover, the Board's holding "based on evidence" apparently relies solely on the self—serving testimony from John Siemsen during the Board's public hearing[2] that he delivered CTS's siting application to the Village on February 10, 2014. Notwithstanding Mr. Siemsen's testimony, however, it is uncontested that the Village of Caseyville has absolutely no evidence that CTS's siting application was filed or received on February 10, 2014. The Village Clerk testified that "I don't think [the siting application] was [received on] the February 10th." (Tr. R. Watt, p. 8). Likewise, the Village Clerk was not able to state or otherwise show on what day the siting application was filed and no person with the Village of Caseyville had any evidence of when CTS's siting application was actually received by the Village. (Tr. R. Watt pp. 7-8, 12-13; Tr. L. McReynolds pp. 7, 11, 41-42; 10/28/14 Tr. 130-131).

It is not consistent with the intent of the legislature, the plain language of the Act, Illinois case law, or public policy considerations to allow for something to be delivered and put in a back room of a municipality, without anyone at the municipality having knowledge that the clock has started ticking with respect to the legal consequence of that document. It is clear that the Village

[2] Neither Mr. Siemsen nor any other person for CTS testified (*i.e.*, under oath) at the siting public hearing.

of Caseyville did not "file" or "receive" the siting application on February 10, 2014, notwithstanding what did or did not happen with or what was or was not delivered by Mr. Siemsen. It is the obligation of a siting applicant to file its siting application, and delivering a banker's box to a village hall, without evidence of receipt by the village clerk's office, cannot be considered a filing.

The Board's Opinion is in error as the Board's holding does not rely on the statutory language of "filed" or "received;" rather, it relies on CTS's alleged "submittal" of the siting application. This "submittal" of the siting application is neither sufficient under the plain language of the Act nor the evidence in the Record, as it is contradicted by the testimony of the Village Clerk, Deputy Clerk, and Attorney. Therefore, the Board should grant this Motion, reconsider its Opinion, and reverse the approval of CTS's siting application by the Village of Caseyville.

(2) Section 39.2 of the Act Requires Testimony from an Applicant to Meet Its Prima Facie Case

The Board also erred when it held that "[t]here is no requirement in the statute or case law that an applicant must testify or subject itself to cross-examination."

> Section 39.2(d) provides: "[at] least one ***public hearing*** is to be held by the county board or governing body . . ." (415 ILCS 5/39.2(d))(emphasis added).
>
> Section 39.2(e) provides: "[a]t any time prior to completion by the applicant of the presentation of the ***applicant's factual evidence and an opportunity for cross-questioning*** by the county board or governing body of the municipality and any participants. . ." (415 ILCS 5/39.2(e)(emphasis added).

From the plain language of the Act, the Village of Caseyville was required to hold a "public hearing" at which CTS, the siting applicant, presented factual "evidence" and the local government and participants were able to "cross-question" CTS on that "evidence."

The Illinois Supreme Court defined "public hearing" to mean a proceeding where parties have a right to appear and give evidence and also the right to hear and examine witnesses whose testimony is presented by opposing parties. *Braden, et al. v. Much, et al.*, 403 Ill 507, 514, 87 N.E.2d 620, 624 (S. Ct. 1949); see also *Farmers Elevator Company v. Chicago, Rock Island & Pacific Railway Company,* 266 Ill. 567, 573, 107 N.E. 841, 843 (S.Ct. 1915) *and North State, Astor, Lake Shore Drive Asso. v. Chicago,* 131 Ill.App.2d 251, 256-7, 266 N.E.2d 742, 745 (1st Dist. 1970). Citing to the above Illinois Supreme and Appellate Court cases, the Fifth District Appellate Court agreed "that 'public hearing' has an accepted judicial definition, that being the definition established by these cases." *People ex rel. Endicott v. Huddleston*, 34 Ill. App. 3d 799, 803, 340 N.E.2d 662, 666 (5 Dist. 1975)

Indeed, the plain language of the Act cited above references all the key elements of the definition of a "public hearing" from the Illinois Supreme and Appellate Court cases - evidence and cross-questioning – neither of which were provided by CTS or the Village of Caseyville.

Notwithstanding the plain language of the Act requiring a public hearing, evidence (including testimony under oath) and cross-examination, even if the Board had to look outside of the Act to glean the legislature's intent, the legislative history supports and ***assumes as its foundation*** that a siting applicant shall testify, under oath, and be subject to cross-examination at the Section 39.2 public hearing.

In 1986, Section 39.2 of the Act was amended to, among other things, add Section 39.2(k), providing that the local siting authority can charge applicants a reasonable fee to cover the review and hearing costs. This followed a decision in which a local siting authority's ordinance requiring an applicant to reimburse the authority for the costs of the siting review and public hearing was essentially found to be preempted by the Act, and the reimbursement of costs

was not allowed. *See, e.g., Browning Ferris of Illinois, Inc., v. Lake County Board of Supervisors, et al.,* PCB 82-101, Slip Op. at 16 (December 2, 1982).

> SENATOR WELCH:
>
> Yes, Senator Geo-Karis, what I said was that a recent court case in Lake County overturned an attempt by Wauconda, Illinois, to charge fees for. . . to an applicant for a siting review. . . to cover the costs incurred by the local government in the siting review process. As you know, in order to determine whether a. . . a dump should be located, a decision has to be made about where it's going to be, ***testimony has to be taken*** about why it's in that area, sometimes geological surveys have to be taken, that's very expensive. The court said you can't charge those fees. This would change that. PA 84-1320 (SB 2117), Senate Transcript, p. 114 (July 1, 1986) (attached as **Exhibit B**)(emphasis added).

The Board erred in its Opinion, as its holding is contradictory to the plain language of the Act and the intent of the legislature that the public hearing be the place where the applicant presents its evidence – sworn testimony – and the local siting authority and public participants have an opportunity to cross-question that testimony. Therefore, the Board should grant this Motion, reconsider its Opinion, and reverse the approval of CTS's siting application by the Village of Caseyville. Not only was the public hearing fundamentally unfair, but CTS failed to meet its *prima facie* case by intentionally seeking and proceeding with a hearing that was not a "public hearing," subverted public participation, and contradicted the language and intent of the law.

WHEREFORE, Participant Roxana Landfill, Inc. respectfully requests this Honorable Board to reconsider its decision affirming the approval of CTS's siting application and reverse the Village Board of the Village of Caseyville's decision or, in the alternative, vacate the decision for lack of jurisdiction or, in the alternative, remand the matter for a new hearing consistent with the language and intent of the Act.

Dated: January 22, 2015

Respectfully submitted,

ROXANA LANDFILL, INC.

By: _____
One of Its Attorneys

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ILLINOIS POLLUTION CONTROL BOARD
December 18, 2014

ROXANA LANDFILL, INC., Petitioner, v. VILLAGE BOARD OF THE VILLAGE OF CASEYVILLE, ILLINOIS; VILLAGE OF CASEYVILLE, ILLINOIS; and CASEYVILLE TRANSFER STATION, L.L.C., Respondents.	)	PCB 15-65 (Third-Party Pollution Control Facility Siting Appeal)
VILLAGE OF FAIRMONT CITY, ILLINOIS, Petitioner, v. VILLAGE OF CASEYVILLE, ILLINOIS, BOARD OF TRUSTEES and CASEYVILLE TRANSFER STATION, L.L.C., Respondents.	)	PCB 15-69 (Third-Party Pollution Control Facility Siting Appeal) (Consolidated)

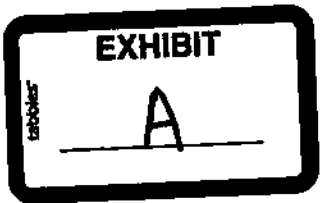
JENNIFER J. SACKETT POHLENZ, CLARK HILL, PLC, APPEARED ON BEHALF OF ROXANA LANDFILL, INC.;

DONALD J. MORAN, PEDERSEN & HOUPT, AND ROBERT J. SPRAGUE, SPRAGUE & URBAN, APPEARED ON BEHALF OF THE VILLAGE OF FAIRMONT CITY, ILLINOIS;

PENNI S. LIVINGSTON, LIVINGSTON LAW FIRM, APPEARED ON BEHALF OF CASEYVILLE TRANSFER STATION, LLC; and

J. BRIAN MANION, WEILMUENSTER LAW GROUP, P.C., APPEARED ON BEHALF OF THE VILLAGE OF CASEYVILLE AND THE VILLAGE BOARD OF THE VILLAGE OF CASEYVILLE.

OPINION AND ORDER OF THE BOARD (by J.A. Burke):



On August 6, 2014, the Village Board of the Village of Caseyville (Village) granted approval to Caseyville Transfer Station, L.L.C. (CTS) for siting a municipal solid waste transfer station. The facility would be located on approximately five acres at the southwest corner of the intersection of Bunkum Road and the Harding Ditch in Caseyville, St. Clair County (Site). On September 8, 2014, Roxana Landfill, Inc. (Roxana) filed a petition asking the Board to review the Village's siting approval. Also on September 8, 2014, the Village of Fairmont City (Fairmont City) filed a petition asking the Board to review the same Village decision.

For the reasons below, the Board finds that Roxana and Fairmont City have failed to establish that the Village lacked jurisdiction, that the Village's siting procedures were fundamentally unfair, or that the Village's determination on any of the five challenged siting criteria was against the manifest weight of the evidence. The Board therefore affirms the Village's decision approving CTS's siting application.

On December 12, 2014, the Village filed a motion for costs of preparing and certifying the record. The Board will rule on the motion for costs after the response deadlines have passed.

In this opinion, the Board first provides a procedural background and addresses several preliminary matters. The Board then provides a legal background and a history of the Village's decision. The Board then addresses the parties' arguments and reaches its conclusion.

PROCEDURAL BACKGROUND

On September 8, 2014, Roxana and Fairmont City (petitioners) filed their petitions for review with the Board. On September 19, 2014, petitioners filed a joint motion to consolidate the proceedings, which the Board granted on October 16, 2014.

On October 7, 2014, the Village and CTS (respondents) filed a joint motion to strike and dismiss Roxana's petition for review (Rox. Mot.). On October 8, 2014, respondents filed a joint motion to strike and dismiss Fairmont City's petition for review (Fairmont Mot.). Roxana filed its response opposing the motion (Rox. Mot. Resp.) on October 20, 2014. On Octoher 22, 2014, Fairmont City moved to strike respondents' motion and requested sanctions against the respondents (Fairmont Mot. Resp.). Respondents filed a response to Fairmont City's motion for sanctions on November 5, 2014 (Fairmont Mot. Reply).

The Village filed the record (R.) on October 16, 2014. The record consists of six separate parts: A, B, C, E, F, and G. On October 27, 2014, Fairmont City moved to exclude certain documents from the record (Mot. Excl.). The hearing officer denied Fairmont City's motion on October 28, 2014. Roxana filed a supplement to the record (Supp. Rec.) on November 11, 2014.

Discovery

Petitioners served written discovery requests on respondents on September 30, 2014. On October 9, 2014, respondents filed their objections to Roxana's interrogatories and document production requests. Roxana responded to the objections on October 15, 2014. The hearing officer overruled the objections on October 16, 2014.

Also on September 30, 2014, the Board's hearing officer issued an order setting forth discovery and deposition deadlines. On October 15, 2014, Roxana filed a motion, that Fairmont City joined, asking the Board's hearing officer to clarify her September 30, 2014 order. Also on October 15, 2014, the Village filed its response to the clarification motion, and a motion for sanctions against respondents. On October 16, 2014, the hearing officer granted petitioner's motion to clarify, and denied the Village's motion for sanctions.

On October 16, 2014, petitioners filed objections to respondents' interrogatories and document production requests. On October 17, 2014, CTS filed a motion to compel Fairmont City to respond to discovery requests. On October 20, 2014, respondents filed a motion to quash deposition subpoenas. The hearing officer addressed the objections at a status conference on October 20, 2014.

On October 17, 2014, respondents filed a joint motion for a protective order. Roxana responded to the motion on October 20, 2014. CTS and the Village filed separate replies on October 21, 2014. The hearing officer granted the motion on October 21, 2014.

Board Hearing

The Board's hearing officer set a hearing for October 28, 2014. Notice of the Board hearing was published in the *Belleville News-Democrat* on September 28, 2014.

On October 23, 2014, Roxana filed subpoenas for the Board hearing. CTS filed a subpoena *duces tecum* on October 27, 2014. Also on October 27, 2014, Fairmont City filed a motion to exclude certain documents from the record. Roxana joined in Fairmont City's motion on October 28, 2014. Also on October 28, 2014, Roxana filed an emergency motion to quash the subpoena *duces tecum*.

The Board hearing was held on October 28, 2014 in Caseyville. The Board received the hearing transcript (Tr.) on October 31, 2014. At the Board hearing, the hearing officer denied CTS's October 27, 2014 motion for the hearing officer to visit the Site. Tr. at 92.

Three witnesses testified at hearing: Scott Penny, the chief of police for the Village of Fairmont City; John Siemsen, the owner of Caseyville Transfer Station, LLC; and John Gilbert, the attorney for the Village of Caseyville from May 2013 until June 2014.

At the Board hearing, the following depositions were entered as being read: Robert Watt, the Village Clerk for the Village of Caseyville; Leslie McReynolds, a Deputy Clerk for the Village of Caseyville; Kerry Davis, a Village of Caseyville Board member; and Walter Abernathy, a Village of Caseyville Board member.

Roxana and Fairmont City filed post-hearing briefs on November 7, 2014. Respondents filed a joint post-hearing brief on November 14, 2014. Roxana and Fairmont City filed reply briefs on November 18, 2014.

PRELIMINARY MATTERS

Village and CTS Joint Motion to Strike and Dismiss Roxana's Petition

Under Section 40.1 of the Act, "[i]f the county board . . . grants approval under Section 39.2 of this Act, a third party . . . who participated in the public hearing conducted by the county board" may petition the Board "for a hearing to contest the approval of the county board." 415 ILCS 5/40.1(b) (2012). The Board shall hear the petition unless "the Board determines that such petition is duplicative or frivolous, or that the petitioner is so located as to not be affected by the proposed facility." *Id.* Under Section 107.200 of the Board's procedural rules, "[a]ny person who has participated in the public hearing conducted by the unit of local government and is so located as to be affected by the proposed facility may file a petition for review of the decision to grant siting." 35 Ill. Adm. Code 107.200.

Respondents contend that Roxana "has not and cannot establish that it is a person that can file a petition for review" under Section 40.1 of the Act or Section 107.200 of the Board's procedural rules. Rox. Mot. at 2. Respondents argue that Roxana has "presented no facts that show it is affected by anything that may occur at the approved transfer station facility." *Id.* at 3. Rather, respondents contend that Roxana owns a landfill over twenty miles from the proposed facility, does not own or lease any real property in Caseyville or the facility vicinity, and does not do any business in Caseyville. *Id.* at 3-4.

Respondents state that Roxana presented no evidence to show that Roxana is so located as to be affected by the proposed facility. Rox. Mot. at 4. Rather, Roxana "is attempting to use the appeal procedures of Section 40.1 of the Act as a barrier to entry into the solid waste disposal marketplace." *Id.*

Roxana argues that respondents fail to comply with Section 101.504 (contents of motions and responses) of the Board's procedural rules (35 Ill. Adm. Code 101.504) and "present false information to the Board and information that is inconsistent with what is even contained in the Record on Appeal." Rox. Mot. Resp. at 3. Roxana states that the record shows Roxana Landfill is 19 miles from the proposed facility, and that Roxana Landfill is located in Madison County, which would be part of CTS's service area. *Id.* Roxana also does business in St. Clair County. *Id.* Roxana contends it is located within the service area and doing business in that service area and therefore meets the requirements of Section 40.1(b) of the Act. *Id.* at 4. Roxana requests that respondents' motion be stricken or, alternatively, denied. *Id.*

Roxana contends that "it is [not] possible to raise an objection to standing based on Section 40.1(b) during the local siting hearing." Rox. Mot. Resp. at 5. Therefore, "it is also not required that a petitioner prove Section 40.1(b) standing requirements at the local siting proceeding." *Id.* Roxana continues that respondents have waived any standing arguments by not also raising them during the local siting proceedings. *Id.*

The Board observes that respondents do not claim Roxana failed to participate in the Village's hearing. Rather, respondents maintain Roxana failed to establish that it is so located as to be affected by the proposed facility. Roxana presented a witness at the Village hearing.

Roxana is also located in Madison County. Rox. Mot. Resp. at 3. CTS states in its application for siting approval that the service area for the proposed transfer station "includes the Illinois counties of St. Clair, Madison and Monroe." R. at A-0009. Roxana also does business in St. Clair County, where the proposed transfer station would be located. Rox. Mot. Resp. at 3; R. at A-0015. The Board finds that Roxana can bring a petition for review because it is "so located as to . . . be affected by the proposed facility." 415 ILCS 5/40.1(b) (2012); 35 Ill. Adm. Code 107.200.

Village and CTS Joint Motion to Strike and Dismiss Fairmont City's Petition

Respondents argue that Fairmont City "has not and cannot establish that it is a person that can file a petition for review" under Section 40.1 of the Act. Fairmont Mot. at 2. Respondents state that Fairmont City did not identify how it is affected by the proposed facility. *Id.* Rather, respondents contend that

> [t]he only interest here from [Fairmont City] is the fact that Waste Management of Illinois, Inc. owns and operates its Milam Landfill within Fairmont City and that Waste Management of Illinois, Inc. and Fairmont City are parties to a host agreement under which Waste Management of Illinois, Inc. makes payments to Fairmont City based on the volumes of waste received at the facility. Fairmont Mot. at 3.

Respondents contend that Waste Management of Illinois, Inc. "is attempting to use the appeal procedures of Section 40.1 of the Act as a barrier to entry into the solid waste marketplace." Fairmont Mot. at 4-5.

Fairmont City responds by requesting that the Board impose sanctions on the Village and CTS, and that the Board strike the motion to dismiss. Fairmont Mot. Resp. at 2. Fairmont City states it is a municipality located one mile from the proposed transfer station and is within the proposed service area. *Id.* at 3. Fairmont City contends that the motion does not cite any legal authority to support its arguments. *Id.* at 4. Fairmont City further contends

> [n]one of the 'facts' asserted in the [respondents'] motion are of record in this proceeding; indeed, they are presented without citation. Nor are those facts supported by oath, affidavit or certification in accordance with Section 1-109 of the Code of Civil Procedure, as required hy Section 101.504 of the Board's Procedural Rules. Fairmont Mot. Resp. at 4.

Fairmont City argues that the Board has already found that an individual living between five and six miles from a proposed facility was "so located as to be affected" by the facility. Fairmont Mot. Resp. at 4-5, citing Valessares v. County Board of Kane County, PCB 86-36, slip op. at 12-13 (July 16, 1987).

Fairmont City contends that the Board should strike the motion and sanction respondents and their counsel under Section 101.800 of the Board's procedural rules (35 Ill. Adm. Code

101.800) and Illinois Supreme Court Rule 137. Fairmont Mot. Resp. at 6. Fairmont City states that

> [t]he unreasonableness of [respondents'] violation is underscored by the nature of the unsupported assertions of fact, namely, inflammatory and personal attacks on opposing counsel's motives and unsupported conspiracy theories regarding non-parties unrelated to any legitimate legal theory. Fairmont Mot. Resp. at 6.

Fairmont City also believes the Board should sanction respondents and their counsel "for signing and filing a motion that is not well grounded in fact or in law and is, instead, interposed for an improper purpose in violation of Illinois Supreme Court Rule 137." Fairmont Mot. Resp. at 6. Fairmont City further argues that the motion is not "warranted by existing law or any good-faith legal argument." *Id.* at 7. For these reasons, Fairmont City states "the Board can infer that [the motion] is, instead, interposed for an improper purpose, such as to harass or to needlessly increase the cost of this appeal." *Id.* at 8. Fairmont City requests that the Board strike the motion to dismiss, require respondents to pay the costs incurred by Fairmont City in bringing its motion for sanctions, and provide such other relief as the Board deems appropriate. *Id.*

Respondents respond to Fairmont City's motion for sanctions by stating that the Board's procedural rules do not provide for monetary sanctions. Fairmont Mot. Reply at 3, citing 35 Ill. Adm. Code 101.800(b) (sanctions for failure to comply with procedural rules, board orders, or hearing officer orders). Respondents also argue that Illinois Supreme Court Rule 137(a) regarding monetary sanctions does not apply because the Board's procedural rules state "[t]he provisions of . . . the Supreme Court Rules . . . do not expressly apply to proceedings before the Board. However, the Board may look to the . . . Supreme Court Rules for guidance where the Board's procedural rules are silent." Fairmont Mot. Reply at 3-4, quoting 35 Ill. Adm. Code 101.100(b). Respondents further contend that their motion to dismiss was brought through "a good faith argument under existing law . . . that a mere financial or economic interest is not alone sufficient to render a party 'so located to be affected by' a proposed facility." Fairmont Mot. Reply at 5.

Respondents concede that if traffic patterns were a concern, that would "raise to the level of being so located as to be affected and Respondents' Joint Motion may be deemed moot based on the new evidence." Fairmont Mot. Reply at 6. Respondents state this in response to Fairmont City Police Chief Scott Penny, who testified at the Board hearing that Fairmont City had a concern over the proposed transfer station with respect to traffic patterns. *Id.* at 5.

The Board observes that respondents do not claim Fairmont City failed to participate in the Village's hearing. Rather, respondents maintain Fairmont City failed to establish that it is so located as to be affected by the proposed facility. Fairmont City presented a witness at the Village hearing. Fairmont City is also located in the service area and will be affected by the traffic patterns of the facility. The Board therefore finds that Fairmont City can bring a petition for review because it is "so located as to . . . be affected by the proposed facility." 415 ILCS 5/40.1(b) (2012); 35 Ill. Adm. Code 107.200.

The Board also denies Fairmont City's motion for sanctions. The Board "has broad discretion in determining the imposition of sanctions." Timber Creek Homes, Inc. v. Village of Round Lake Park, PCB 14-99, slip op. at 8 (Aug. 21, 2014). In exercising this discretion, the Board considers factors such as "the relative severity of the refusal or failure to comply; the past history of the proceedings; the degree to which the proceeding has been delayed or prejudiced; and the existence or absence of bad faith on the part of the offending party or person." *Id.*, citing 35 Ill. Adm. Code 101.800(c). The Board is not persuaded that the respondents' motion to dismiss was a deliberate refusal to comply, an effort to unreasonably delay the proceedings, or in bad faith. The Board therefore denies Fairmont City's motion for sanctions.

Motion to Exclude Late-Filed Pleadings from Village Record

The Village held a public hearing on CTS's siting application on May 29, 2014 (Village hearing). Fairmont City argues that CTS filed the following documents with the Village after the written comment deadline of June 28, 2014, and without permission or authority:

1. CTS's post-trial summary (R. at F-0002);

2. CTS's memorandum in opposition to Roxana's motion to dismiss based on jurisdiction (R. at F-0030);

3. CTS's memorandum in opposition to Roxana's motion to dismiss hased on fundamental fairness (R. at F-0023); and

4. CTS's objection to false information presented by opponents regarding 1,000 foot setback requirement (R. at F-0027). Mot. Excl. at 2-3.

Fairmont City therefore moved that these documents be excluded from the Village record. Mot. Excl. at 3. The Board's hearing officer denied the motion at the Board hearing. Tr. at 22.

Fairmont City states that the Act provides that "the public hearing before the local decision maker shall allow the development of a record sufficient to form the basis for an appeal of the decision, and that the local decision maker shall consider any comments received within 30 days of the last public hearing." Fairmont Br. at 6, citing 415 ILCS 5/39.2(c) (2012). Fairmont City continues that "[t]here is no statutory, administrative or common law authority for the submission of materials after the 30-day post-hearing comment period." Fairmont Br. at 7. Fairmont City therefore argues that the Board hearing officer's denial should be reversed and the four documents listed above excluded from the record. Fairmont Br. at 7. Fairmont City raises these objections in its opening brief, which was filed within 14 days after the Board received the hearing transcript. *See* 35 Ill. Adm. Code 101.502(b).

Fairmont City does not contend that it was prejudiced by CTS's late filings. Fairmont City further does not contend that the Village considered the documents in its deliberations, or that the decision makers did not have access to the complete record prior to their decision. The Act requires the Board to hear third-party petitions for review of siting decisions in accordance with Section 40.1(a) of the Act, with such hearing "based exclusively on the record before . . .

the governing body of the municipality." 415 ILCS 5/40.1(b) (2012). The Board therefore upholds the hearing officer's decision.

LEGAL BACKGROUND

Before the Illinois Environmental Protection Agency (IEPA) can issue a permit to develop or construct a new or expanding pollution control facility, the permit applicant must obtain siting approval for the facility from the local government (*e.g.*, the county board if the facility is located in an unincorporated area) pursuant to Section 39.2 of the Act (415 ILCS 5/39.2 (2012)). Section 39.2 of the Act governs pollution control facility siting applications and the processing of those applications by local authorities. Specifically, Section 39.2 addresses, among other things, the proof required of siting applicants, notice of siting applications, public hearings before the local siting authority, the opportunity for public comment, and the form of the siting decision. Section 39.2(a) requires the applicant to submit to the local siting authority sufficient details describing the proposed facility to demonstrate compliance with each of the nine criteria of Section 39.2(a). A negative decision as to one of the criteria is sufficient to defeat an application for site approval of the pollution control facility. Town & Country Utilities, Inc. v. PCB, 225 Ill. 2d 103, 109 (2007).

Section 39.2(a) of the Act requires that an applicant seeking approval for siting a pollution control facility must provide evidence demonstrating that the nine criteria listed in subsections (i) through (ix) are met. 415 ILCS 5/39.2(a) (2012). Five of the nine criteria are at issue in this proceeding:

(i) the facility is necessary to accommodate the waste needs of the area it is intended to serve [Criterion 1];

(ii) the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected [Criterion 2];

(iii) the facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property [Criterion 3];

* * *

(vi) the traffic patterns to and from the facility are so designed to minimize the impacts on existing traffic flow [Criterion 6];

* * *

(viii) if the facility is to be located in a county where the county board has adopted a solid waste management plan consistent with the planning requirements of the Local Solid Waste Disposal Act or the Solid Waste Planning and Recycling Act, the facility is consistent with that plan; for purposes of this criterion (viii), the "solid waste management plan" means

> the plan that is in effect as of the date the application for siting approval is filed [Criterion 8]. 415 ILCS 5/39.2(a) (2012).

The local siting authority may grant siting approval only if a proposed facility meets all nine of the criteria set forth in Section 39.2(a) of the Act (415 ILCS 5/39.2(a) (2012)). *See* Town & Country Utilities, 225 Ill. 2d at 117; *see also* Concerned Adjoining Owners v. PCB, 288 Ill. App. 3d 565, 576 (5th Dist. 1997); Land and Lakes Co. v. PCB, 319 Ill. App. 3d 41, 48 (3rd Dist. 2000). Pursuant to Section 39.2(e), "[i]n granting approval for a site the county board or governing body of the municipality may impose such conditions as may be reasonable and necessary to accomplish the purposes of this Section and as are not inconsistent with regulations promulgated by the Board." 415 ILCS 5/39.2(e) (2012). The local siting authority must hold at least one public hearing and allow any person to file written public comment. *See* 415 ILCS 5/39.2(c), (d) (2012). The local siting authority's decision must be "in writing, specifying the reasons for the decision, such reasons to be in conformance with subsection (a) of this Section." 415 ILCS 5/39.2(e) (2012).

FACTUAL BACKGROUND

Application

On January 15, 2014, CTS mailed notice of its intent to file a siting application with the Village (notice of intent) to Senator James F. Clayborne, Jr., Representative Jay Hoffman, the Metro East Sanitary District, Kathryn Mertzke, DW Mertzke Excavating & Truck, Mertzke Land Trust, Wottowa Carolyn Weisssert, Calhoun County Contracting Co., Calhoun County Contractors Co., Ralph Stanley, Patrick Stanley, and Carl Weissert. Supp. Rec. Exh. C. On January 23, 2014, CTS published notice of its intent to file a siting application in the *Belleville News-Democrat*. The published notice stated that CTS will file an application for local siting approval with the Village of Caseyville on February 10, 2014. *Id.* at 000180. On February 10, 2014, John Siemsen, owner of CTS, personally delivered CTS's application for siting approval (Application) to the Caseyville Village Hall. Tr. at 60.

Village Hearing

The Village hearing was held on May 29, 2014. Mr. Siemsen offered public comment in support of the Application. Mr. Siemsen entered the Application as an exhibit at the Village hearing. R. at E-0071. Sheryl Smith, an environmental consultant and senior project manager with URS Corporation, testified on behalf of Fairmont City. R. at E-0128. URS Corporation is "an international integrated engineering construction and technical services company." *Id.* Ms. Smith has performed 32 "need assessments" for siting cases, referring to siting Criterion 1 of Section 39.2(a) of the Act. *Id.* at E-0129. Mr. Dustin Riechmann, a traffic engineer who has performed over 50 on-site traffic plans, testified on behalf of Roxana. *Id.* at E-0163, E-0165. Mr. Riechmann works for Bernardin, Lochmueller & Associates, a "full service civil engineering and infrastructure firm." *Id.* at E-0164. Various members of the public also offered comment at the Village hearing.

Criterion 1 - Need

Mr. Siemsen stated that there are no transfer stations accepting municipal solid waste that are located close to the Metro East area. R. at E-0084. Mr. Siemsen noted that southwest Illinois has the fewest transfer stations in Illinois based on population and geography. *Id.* at E-0087. Mr. Siemsen stated that the proposed transfer station would increase competition in the area. *Id.* at E-0085. Mr. Siemsen also quoted a United States Environmental Protection Agency (USEPA) manual as stating that transfer stations reduce waste transportation costs, fuel consumption and vehicle maintenance costs, traffic, air emissions, and road wear. *Id.*, citing App. Exh. E. Mr. Siemsen further stated that the proposed transfer station is "environmentally friendly by reducing transportation and fuel usage. It will decrease wear and tear on vehicles and generally could be a reasonable and efficient part of the waste management marketplace here in the Caseyville area." R. at E-0088.

Ms. Smith testified that "the amount of waste [produced within the service area] will range over a 20-year period . . . between 6.8 million and 10.3 million tons depending upon the recycling goals that are actually met." R. at E-0132. Ms. Smith testified that the existing Milam, Cottonwood, and Roxana landfills have about 47.8 million tons of capacity available as of January 2014. *Id.* at E-0136. Ms. Smith also testified that transporting waste to the Perry County landfill outside of the service area would cost $9 per ton more than the Milam landfill, and $8 per ton more than the Roxana landfill. *Id.* at E-0134, E-0135. The travel time to the Perry County landfill would be three hours roundtrip from Caseyville, as opposed to one hour round trip to North Milam or Roxana. *Id.* at E-0135.

Ms. Smith testified that, based on this assessment, her "opinion is that the proposed Caseyville transfer station is not necessary to accommodate waste needs of the service area." R. at E-0137. Ms. Smith based this assessment on five reasons: there is sufficient disposal capacity within the service area from the existing landfills; it would cost $12.65 a ton to transfer waste to the Perry County landfill or other landfills more distant from the service area; the solid waste plan for the three counties identifies landfilling as the preferred disposal option; the solid waste plan does not address the issue of a transfer station; and the solid waste plan identified that the three counties would be transporting their waste by direct haul. *Id.* at E-0138.

Criterion 2 – Designed and Located to Protect Public Health, Safety and Welfare

Mr. Siemsen stated that, when looking at the uses of land surrounding the Site, "there really are no incompatible land uses in close proximity to the area." R. at E-0088. Further, Mr. Siemsen stated there are no surrounding residential land uses and that the land uses "are not a type that would be incompatible with the transfer station." *Id.* Mr. Siemsen identified an excavation business, trucking business, salvage yard, and a quarrying operation in the surrounding area. *Id.* Mr. Siemsen also stated that the nearest residence is 1,630 feet away. *Id.* at E-0088-89.

Mr. Siemsen stated that there are no wetlands in the immediate vicinity of the Site. R. at E-0089, citing Wetlands Map (App. Fig. 9). Mr. Siemsen noted that CTS will be conducting a consultation with the Illinois Historic Preservation Agency with respect to archeological or

historic sites, but that preliminary investigation "revealed that we don't have that problem." R. at E-0089. The Application also contains documentation that there are no wild and scenic rivers within the vicinity of the Site. *Id.*, citing App. Exh. K. Mr. Siemsen further noted that CTS did a consultation through the Illinois Department of Natural Resources "with respect to endangered and threatened species as well as natural areas and other sensitive areas." R. at E-0089-90. The consultation revealed "there's no record of state-listed threatened or endangered species, Illinois natural area inventory sites, dedicated Illinois nature preserves, registered land and water reserves in the vicinity of the proposed location." *Id.* Mr. Siemsen also stated that there are "no sole source aquifers, wells or other sensitive groundwater features at the proposed site." *Id.*, citing App. Exh. M.

Mr. Siemsen stated that the Site will have a perimeter fence and a locking gate to prevent access during nonbusiness hours. R. at E-0091, citing Site Plan (App. Fig. 4). Mr. Siemsen stated that the facility will always be staffed and that there will be civil engineering controls to ensure that stormwater runoff is properly managed. R. at E-0091. The Site will also have signage that includes permit information, hours of operation, prohibited materials and activities, requirements for load and tarping, and an emergency 24-hour contact number. *Id.*

Mr. Siemsen stated that "all of the waters that come into contact with the municipal solid waste will be collected in floor drains and then pumped into an above-ground storage tank." R. at E-0091. Further, "all of the waste material will be indoors and the wash waters that result from cleaning the floors every day will be pumped into a tank and then hauled to an off-site facility . . . for treatment." *Id.* at E-0091-92.

Mr. Siemsen stated that the proposed transfer station "will be operated in a manner that is protective of human health and the environment and safety." R. at E-0092. The proposed transfer station's operating procedures will include load checking and random inspections. *Id.* The facility staff "will be trained to recognize any type of waste materials that are not acceptable for this facility." *Id.* The staff will be trained "so as they're processing the waste, they will be able to identify waste that are inappropriate." *Id.* Customers will have a contractual obligation to remove any inappropriate waste materials or reimburse CTS for costs associated with disposing of the materials. *Id.* at E-0092-93.

Mr. Siemsen stated that the tipping floor of the proposed transfer station will be pressure washed every day and that CTS "will be required by regulation to clean it up every day, so there won't be an ongoing accumulation of waste." R. at E-0095. CTS will also control litter by requiring all open-topped trailers to be tarped. *Id.* at E-0096. CTS will "be vigilant about vector controls to make sure there's no rats or birds or anything at the facility." *Id.* Mr. Siemsen stated that CTS will control dust by paving all of the areas where trucks will be driving or maneuvering. *Id.* Further, all of the waste operations will occur indoors. *Id.*

Mr. Siemsen stated that noise will be controlled by keeping all operations indoors and equipping all heavy equipment with mufflers. R. at E-0096. Finally, the proposed transfer station "will also keep all appropriate records which will be available for inspection by the village, which will track waste tonnage, load checking reports, IEPA documents, employee training and personnel records, et cetera, et cetera." *Id.* at E-0097.

Mr. Riechmann testified that Criterion 2 was not met because "the application does not contain sufficient information to make a determination whether the public health, safety and welfare will be protected from an on-site traffic plan." R. at E-0169.

Criterion 3 – Minimize Incompatibility and Impact on Property Values

Mr. Siemsen stated that "there really are no incompatible land uses in close proximity to the area." R. at E-0088. Further, Mr. Siemsen stated the surrounding land uses "are not a type that would be incompatible with the transfer station." *Id.* Mr. Siemsen identified an excavation business, trucking business, salvage yard, and a quarrying operation in the surrounding area. *Id.*

Mr. Siemsen, referring to an Application figure, stated that "you simply have nobody living near the transfer station, no retail businesses, nothing that would be extremely sensitive to a land use." R. at E-0097.

Criterion 6 – Minimize Impact on Existing Traffic

Mr. Siemsen described CTS's "throughput and capacity analysis" that demonstrates "the quantities of waste that will be coming in and out of the facility." R. at E-0093. The analysis is "based on [CTS's] highest estimate of 300 tons per day." *Id.* CTS estimates "an approximate average of waste of 6 tons capacity for the trucks that are coming in and 22 tons for the trucks that are going out." *Id.* CTS also anticipates "that the peak of the operation is going to be in the middle part of the day with the slow ramping up and then busy during the middle of the day and then tapering off." *Id.* CTS anticipates "at the peak about six trucks coming in per hour." *Id.* CTS also expects "from one to two trailers" leaving the proposed transfer station at the peak operating times. *Id.* at E-0093-94. CTS expects "there to be around 20 tons within the transfer station facility" during peak hours. *Id.* at E-0094. Mr. Siemsen stated that operating hours will be from 6:00 a.m. to 8:00 p.m., but added that CTS "estimate[s] it's only going to be between 8:00 and 5:00." *Id.* at E-0094-95.

Mr. Siemsen described the facility layout as trucks will enter, be weighed, then proceed to a ramp with two bays where "the truck will enter and then dump the waste and then exit the facility." R. at E-0101-02. Trailers that haul the waste to landfills "will make the same routes around the facility, enter in through the loading area and exit back out onto Bunkum Road." *Id.* at E-0102. The proposed transfer station "will also be equipped with a queuing area where trucks will be able to park in the event that hays are currently occupied." *Id.* Mr. Siemsen stated that a traffic study will be required to be completed. *Id.*

Mr. Riechmann testified that Criterion 6 was not met because "the application does not contain sufficient information to determine whether the traffic patterns to or from the facility are so designed as to minimize the impact on existing flows." R. at E-0171. Mr. Riechmann further testified that the condition of Bunkum Road "is not suitable." *Id.* Mr. Riechman testified on a group of photographs that he took of the traffic patterns of the proposed site. *Id.* at E-0173. Mr. Riechmann stated that a "primary point of ingress/egress for the site . . . is congested as an existing condition." *Id.* at E-0176. Further, "trucks are jumping the curb on a regular basis as

they maneuver around that turn [on the westbound off-ramp from I-64]." *Id.* According to Mr. Riechmann, "[t]hat would indicate that the curb line is perhaps not designed sufficiently for the types of trucks that are traversing it." *Id.*

Mr. Riechmann testified to waiting at the nearby railroad crossing "for six minutes" and that the resulting line, which included school buses, was "a pretty long duration occurrence and queued them still back." R. at E-0179. Mr. Riechmann testified that there is "a lot of activity . . . in front of the [bus] depot around 9:00 a.m." *Id.* at E-0180. Mr. Riechmann described these activities as "existing traffic flows that would be impacted by traffic generated by the site." *Id.* Mr. Riechmann further testified that, regarding the nearby school program, "their heaviest time in the day is between 11:00 and 1:00 when they do that shift between the a.m. and p.m. programs, the peak time that was established in the site application for the trucks accessing the site." *Id.* at E-0182. Mr. Riechmann also testified that the same railroad congestion he observed in the morning would occur in the afternoon when the school buses are crossing the tracks in the opposite direction, which would "effectively queue back beyond the frontage of the site and block access to the site." *Id.*

Mr. Riechmann testified that the guardrail over the Harding Ditch obstructs sight lines when exiting the Site. R. at E-0185. Mr. Riechmann also compared the sight lines to those of the American Association of State Highway and Transportation Officials (AASHTO) Design Manual for Safe Sight Distances. *Id.* at E-0168. Mr. Riechmann describes the sight lines as "less than the AASHTO minimums for a single unit truck." *Id.* at E-0185. Those standards require 560 feet for collection vehicles and 680 feet for a larger truck. *Id.* at E-0186. Further, sight distance for a passenger vehicle "at this point is virtually zero." *Id.* at E-0187. Mr. Riechman also presented a diagram the he prepared of the proposed Site's ingress and egress. *Id.* Mr. Riechmann also testified that, even with the wide exit driveway provided for in the Site plan, "trucks would encroach on the westbound lane of Bunkum Road." *Id.* at E-0188. Mr. Riechmann further stated that Mr. Siemsen's discussion did not account for employee trips, potable water haulers, general public trash haulers, outgoing collection vehicles, and incoming transfer trailers. *Id.* at E-0191-92.

Criterion 8 – Consistent with the Solid Waste Management Plan

Mr. Siemsen stated that the county solid waste management plan "doesn't really address transfer stations one way or the other." R. at E-0103. Mr. Siemsen continued that "the only item perhaps relevant in the county plan is that it expresses the concern that a large amount of the waste is landfilled at the landfills in the Metro East area is actually coming from Missouri." *Id.* Mr. Siemsen stated that the proposed transfer station is consistent with the county solid waste management plan "because it allows for actually exporting the waste away from this area, from landfills that are not located in the Metro East area." *Id.* at E-0103-04.

Ms. Smith testified that the solid waste plan for the three counties in the service area identifies landfilling as the preferred disposal option. R. at E-0138. Ms. Smith also testified that the solid waste plan does not address transfer stations, and that the plan identified that the three counties would be transporting their waste by direct haul. *Id.*

Village Approval

The Village held a special meeting on August 6, 2014, regarding CTS's Application for local siting approval. R. at G-0001. The Village approved the Application by a 4-1 vote. *Id.* at G-0009-10.

Norman Miller, a Supervisor for Canteen Township, offered a public comment at the Village meeting. R. at G-0005. Mr. Miller stated that the siting criteria had not been met. *Id.* He stated that "most people . . . did not know that is the main thoroughfare for all the school buses that handle the East St. Louis School District." *Id.* at G-0005-6. He also stated that the proposed transfer station would bring with it problems including smell, rodents, and trash falling out of the garbage trucks. *Id.* at G-0006. He also stated that the design of the proposed transfer station will increase the traffic in Canteen Township while being directed away from the Village of Caseyville. *Id.* at G-0007. Mr. Miller further stated that tractor trailers leaving the Site will not be able to remain in their own lane when turning onto the street. *Id.*

Before the Village voted on the Application, Trustee Kerry Davis asked the Village attorney for clarification on the siting criteria mentioned by Mr. Miller. R. at G-0008. The Village attorney noted that it was the nine criteria "in the statute" as well as a paragraph "saying you may also consider previous operating experience." *Id.* Trustee Walter Abernathy asked why the Village members "were not given this literature here prior to this meeting?" *Id.* The Village attorney stated that the literature, meaning the statute, was in the Application and in the record. *Id.*

Following the Village's vote, Trustee Abernathy stated that the proposed transfer station "would be a good thing for Caseyville." R. at G-0010. He stated that "we got all kinds of traffic down there" and that when a local trucking company moved into the same area, "there was no discussion over the roads or anything at that time." *Id.* at G-0010-11. Trustee Ron Tamburello stated

> [t]hat's also an industrial area down there. There's more and more industries that are in that area. So you're going to have the traffic, and things are going to be upgraded down here. That's something we're going to have to work with in the future. Several years back whenever we had the trucking, traffic was running up and down Bunkum. We didn't have that much of a problem. They had a lot of traffic back then. What I'm saying, it concerns the trucks down there and the buses down there for [Bus District] 189. R. at G-0011.

Trustee Davis stated that the county is grading Bunkum Road, and Trustee G.W. Scott added that the county is "grading all the way from 89th Street to 37th Street." R. at G-0011. Mayor Len Black added "[t]here isn't any equipment going down there now which we know." *Id.*

Trustee Davis stated as a reason for approving the Application,

> [m]y reason is that right now the Village is in financial dire straits, and this is a revenue source for the Village we can certainly use. And we don't think – it's

> going to be a good thing for neighbors of Canteen and Washington Park and everybody else involved, but we have to do what needs to be done to protect the interest of the village residents. . . . So my reason for voting for it is the revenue source that we certainly need it badly, and we'll do everything – we have an ordinance on file regulating trash hauling businesses. You got to keep your trucks covered. Got to keep your trucks maintained. That's been on the books quite some time. I would hope the whole Board would agree, and urge our police department to monitor these trucks and make sure they are complying with village ordinances and do what they say as far as keeping their trucks covered on the roadway and do all their transfer of the trash inside a closed building which will contain the smell and not let the trash escape into the neighboring community and neighboring properties. R. at G-0012-13.

BOARD DISCUSSION

Roxana and Fairmont City appeal the Village's decision approving CTS's application to locate a transfer station in Caseyville. The Act provides for a third-party appeal to the Board if the local government grants siting approval. Specifically, Section 40.1(b) of the Act provides:

> If the county board . . . grants approval under Section 39.2 of this Act, a third party other than the applicant who participated in the public hearing conducted by the county board . . . may, within 35 days after the date on which the local siting authority granted siting approval, petition the Board for a hearing to contest the approval of the county board . . . . 415 ILCS 5/40.1(b) (2012).

A petitioner has the burden of proof on appeal to the Board. 415 ILCS 5/40.1(b) (2012). The Board's review of the local government's decision on the siting criteria is based "exclusively on the record before the county board or the governing body of the municipality." *Id.*

Roxana and Fairmont City present various challenges to the Village's approval to locate CTS's proposed transfer station in Caseyville. Roxana argues that the Village lacked jurisdiction because there is no evidence that the Application was filed on the correct date and because the Site description in the public notice was confusing. Roxana also argues that the Village hearing was fundamentally unfair, and that the Village's decision on Criteria 2 and 6 was against the manifest weight of the evidence. Fairmont City argues that the Village hearing was fundamentally unfair, and that the Village's decision on Criteria 1, 3 and 8 was against the manifest weight of the evidence. The Board addresses each of these arguments.

Jurisdiction

Application Submittal Date

Section 39.2(b) of the Act states

> No later than 14 days before the date on which the county board . . . receives a request for site approval, the applicant shall cause written notice of such request

> to be served either in person or by registered mail . . . on the owners of all property within 250 feet in each direction of the lot line of the subject property. . . . Such written notice shall also be served upon members of the General Assembly from the legislative district in which the proposed facility is located and shall be published in a newspaper of general circulation published in the county in which the site is located. Such notice shall state . . . the date when the request for site approval will be submitted . . . . 415 ILCS 5/39.2(b) (2012).

CTS submitted notices to property owners within 250 feet of the Site, members of the General Assembly from the legislative district in which the Site is located, and published notice in the *Belleville News-Democrat*. *See* Supp. Rec. Exh. C. CTS stated in the notice that it would file the Application with the Village on February 10, 2014. *Id.* at 000180. Mr. Siemsen stated at the Board hearing that he personally delivered the Application to the Caseyville Village Hall on February 10, 2014. Tr. at 60.

Roxana disputes that CTS delivered the Application on February 10, 2014. Roxana argues that, for the Village to have jurisdiction on the Application, the Village had to have received the Application on February 10, 2014. *Id.* at 11. Roxana contends that there is no evidence that the Village received the Application on that date. *Id.*, Rox. Reply at 8. Roxana also notes that Mr. Siemsen agrees there is no document produced by the Village evidencing its receipt of the Application on February 10, 2014. Rox. Reply at 9. Roxana further argues that it is inconsequential if the Application was physically delivered on February 10, 2014, because "the law clearly states that the siting application must be 'received.'" *Id.* at 10. Roxana also contends that the Village did not follow its proper policy and procedure for receiving documents when it did not place a date received stamp anywhere on the Application. *Id.* at 11.

Roxana argues that the "notice requirements are jurisdictional prerequisites to the municipal government's power to hear a siting proposal" and that "even a one day deviation in the notice requirement renders the local government without jurisdiction." Rox. Br. at 10 (citations omitted). Roxana contends that the Village Clerk cannot state with specificity what date the Application was received by the Village. *Id.* at 14. Roxana states that the Board should therefore find jurisdiction did not vest with the Village and vacate the siting approval. *Id.* Fairmont City agrees with Roxana's position and argues that "there is no written evidence or documentation that the Application was received by or filed with the Village" on February 10, 2014. Fairmont Br. at 3.

Respondents argue that the record clearly shows Mr. Siemsen "personally delivered the Application to the Caseyville Village Hall on February 10, 2014." Resp. Br. at 3. Mr. Siemsen testified that he personally drove to Caseyville where he hand-delivered the Application to the Village of Caseyville. *Id.* Mr. Siemsen also stayed in an area hotel the night of February 10, 2014, as shown by CTS's Exhibit 2 attached to its brief. *Id.* at 3-4.

Section 39.2(b) provides, "[s]uch notice shall state . . . the date when the request for site approval will be submitted." 415 ILCS 5/39.2(b) (2012). Whether the applicant provided proper notice to all landowners required to receive it under Section 39.2(b) of the Act is a threshold question in the appeal of pollution control facility siting. *See* 415 ILCS 5/39.2(b) (2012). "Section 39.2(b)'s notice requirements are jurisdictional prerequisites that the applicant must

follow in order to vest the county board with the power to hear a landfill proposal." Maggio v. PCB, 2014 IL App (2d) 130260, ¶15 (2nd Dist. 2014), citing Kane County Defenders v. PCB, 139 Ill. App. 3d 588, 593 (2nd Dist. 1985).

The basic principle in construing Section 39.2(b) "is to ascertain and give effect to the legislature's intent. The language of the statute is the most reliable indicator of the legislature's objectives in enacting a particular law." Town & Country Utilities, 225 Ill.2d at 117. The role assigned by the Act to the village board "clearly reflects a legislative understanding that the county board hearing, which presents the only opportunity for public comment on the proposed site, is the most critical stage of the landfill site approval process." Kane County Defenders, 139 Ill. App. 3d at 593. Even a one-day deviation from the 14-day notice requirement renders the County Board without jurisdiction to consider the request. Tate, 188 Ill. App. 3d at 1015.

Roxana and Fairmont argue that the record contains no evidence that the Application was received on February 10, 2014 – the date specified in the published notice pursuant to Section 39.2(b) of the Act. Mr. Siemsen testified at the Board hearing that he drove to Caseyville and personally delivered the Application. Tr. at 60. The cover letter submitted with the Application is dated February 10, 2014. Supp. Rec. No. 1. There is no evidence that the Application was submitted on any other date. Petitioners also cite no statute or case law requiring an applicant to maintain a receipt of the submission date. It is therefore sufficient that the evidence here shows that the Application was submitted on February 10, 2014, and there is no evidence to suggest otherwise.

Petitioners also argue that the Village did not follow its own policy and procedure for receiving documents when it did not place a date-received stamp anywhere on the Application. Rox. Reply at 11. The Act does not require a date-received stamp. The Board finds that the lack of a date-received stamp on the Application does not render the Village without jurisdiction to hear the Application.

The Board finds, based on the evidence in the record, that the Application was submitted to the Village on February 10, 2014, as stated in CTS's notice of Application. It is sufficient that Mr. Siemsen personally delivered the Application on February 10, 2014 at the Caseyville Village Hall. Contrary to petitioners' allegations, there is no noncompliance here with the Section 39.2(b) requirement that the siting notice state the date when the request for site approval will be submitted. 415 ILCS 5/39.2(b) (2012).

Site Description

Section 39.2(b) of the Act requires a notice of intent to request siting approval for a landfill or transfer station to include the following:

> the name and address of the applicant, the location of the proposed site, the nature and size of the development, the nature of the activity proposed, the probable life of the proposed activity, the date when the request for site approval will be submitted, and a description of the right of persons to comment on such request as hereafter provided. 415 ILCS 39.2(b) (2012).

CTS, in its notice of intent, described the proposed Site as follows:

> A five (5) acre parcel, more or less, situated directly southeast of the intersection [of] Bunkum Road and the Harding Ditch, in Section 15 of Canteen Township, St. Clair County, Illinois, within the municipal boundaries [of] Caseyville, Illinois, and consisting of portions [of] the parcels identified by the St. Clair County Assessor as PIN Numbers 02-15-400-028, 02-15-400-029 and 02-15-400-030. Supp. Rec. Exh. C at 000180.

Roxana argues that the notice's description of the location of the Site as "directly southeast of the intersection" in conjunction with three parcel numbers "is confusing as it relates to a much larger scope of land than the mere five (5) stated acres." Rox. Br. at 15. Roxana argues that the description is further complicated because "all of the [Property Index Numbers (PINs)] used by CTS are not identifiable on the St. Clair County Tax Assessor's website" and that "the tax record identifies none of these properties as being located on Bunkum Road." *Id.* Roxana contends that CTS's property description "is incorrect and misleading and insufficient to meet the requirements of Section 39.2 of the Act." *Id.* Roxana also notes that there is no address on the pre-filing notice. Rox. Reply at 11.

Respondents state that the specific addresses of the affected parcels were not included in the notice because the addresses "are on Rock Springs Road" and "would be confusing." Resp. Br. at 6. Respondents also contend that the PINs identified in the notice were sufficient to identify the parcels, and that the additional decimal place added by the St. Clair County Tax Assessor database is "to provide an additional field for identifying mineral and other rights." *Id.* Respondents note that "the figures and drawings included in the Application, available for inspection at the Village Clerk's office, made clear the exact location of the Site." *Id.*

Section 39.2(b) of the Act requires that the notice include "the location of the proposed site." 415 ILCS 5/39.2(b) (2012). Petitioners contend that the Site description in the notice is confusing and that the PIN numbers used by CTS are not identifiable on the St. Clair County Tax Assessor's website. Rox. Br. at 15. Respondents contend that PIN numbers were used instead of specific property addresses because the addresses are on a separate road. Resp. Br. at 6. Respondents also note that figures and drawings included in the Application "made clear the exact location of the Site." *Id.*

The Board finds the description of the Site location in the notice of intent sufficient to meet the notice requirements of Section 39.2(b) of the Act. "The purpose of the notice is obviously to notify interested persons of the intent to seek approval to develop a new site or to expand an existing facility." Tate, 188 Ill. App. 3d at 1019. The Site description in the notice described the location of the proposed transfer station. In Daubs Landfill, Inc. v. PCB, the court found that a narrative description was adequate to apprise the reader of the location of the site, even though the legal description placed the site six miles from the site identified in the narrative description. Daubs Landfill, Inc. v. PCB, 166 Ill. App. 3d 778, 782 (5th Dist.1988). The Board finds that the Site location description in this case was "sufficient to notify potentially interested parties that some new activity was being proposed for the site as to enable inquiries to be made."

Tate, 188 Ill. App. 3d at 1019. The Application included figures that made clear the exact location of the Site. *See* Area Land Use Map (App. Fig. 2), Site Boundaries (App. Fig. 3). Petitioners do not dispute that these figures were available to the public for review. The Board therefore finds that the Site location description provided in the notice was sufficient to satisfy the requirements of Section 39.2(b) of the Act. 415 ILCS 5/39.2(b) (2012).

Board Finding on Jurisdiction

The Board finds that the record demonstrates CTS submitted the Application to the Village on February 10, 2014, the date specified in CTS's notice of intent to submit its Application. The Board also finds that CTS's notice of intent to submit its Application adequately described the Site location. Accordingly, petitioners have failed to establish that the Village lacked jurisdiction to hear CTS's siting request based upon noncompliance with Section 39.2(b) of the Act.

Fairness of Village Hearing

Petitioners challenge the fairness of the Village hearing on four grounds: (1) no rules of hearing were made known to the public prior to the actual hearing; (2) CTS was not required to present a witness for cross-examination; (3) the Application was not readily available to the public; and (4) the hearing room was not big enough for the hearing.

Roxana's Argument

Roxana states that the Village "had no siting ordinance and no rules of hearing were made known to the public prior to the actual hearing." Rox. Br. at 16. Roxana contends that "[d]ue process at this type of public hearing requires that the siting applicant testify under oath and be subject to cross-examination." *Id.* at 18. Roxana analogizes Section 39.2 proceedings to special use zoning proceedings. *Id.* at 19. Roxana states that the Illinois Supreme Court "and courts thereafter have long held that cross-examination is essential to the fundamental fairness of such a zoning hearing." *Id.*, citing People *ex rel.* Klaeren v. Village of Lisle, 352 Ill. App. 3d 831, 839-840 (2nd Dist. 2004). Roxana contends "[t]here is no reason to differentiate the fundamental fairness of a Section 39.2 proceeding from that of special use zoning and find that cross-examination while a necessary right for one, is not required for the other." Rox. Br. at 20.

Roxana further states that the siting Application was unavailable to the public for at least the time period from February 10, 2014 until the time that the Application was received by the Village Clerk and made available for public review. Rox. Br. at 20. Further, the Deputy Village Clerk "failed to respond immediately throughout the siting process to requests for the public record and, instead, contacted the Village Clerk each time for some parties and not for others, to get permission to disclose the public record." *Id.* at 20-21. Roxana also notes that the Village hearing location was changed just prior to the hearing, and that the room in which the hearing was held "failed to fit all participants." *Id.* at 21.

Village and CTS Argument

Respondents argue that the Act "does not prohibit a [municipal authority] from establishing its own rules and procedures governing conduct of a local siting hearing so long as those rules and procedures are not inconsistent with the Act and are fundamentally fair." Resp. Br. at 22, citing Waste Management, Inc. v. PCB, 175 Ill. App. 3d 1023, 1036 (2nd Dist. 1988). Respondents continue that "due process is satisfied by procedures that are suitable for the nature of the determination to be made and that conform to fundamental principles of justice . . . Furthermore, not all accepted requirements of due process in the trial of a case are necessary at an administrative hearing." *Id.* Respondents contend that "the fundamental fairness rights afforded under the [Act] 'are limited to (1) public inspection of the application and related documents and materials on file and (2) public comment concerning the appropriateness of the site for its intended purpose.'" *Id.*, quoting Stop the Mega-Dump v. County Board of DeKalb County, 2012 IL App (2d) 110579, ¶ 43 (2d Dist. 2012). Respondents state that "[a]t the [Village] hearing, the Opponents and members of the public were given a full and fair opportunity to present any evidence, testimony, or objections." Resp. Br. at 22.

Fairmont City's Argument

Fairmont City contends that the respondents' reliance on Stop the Mega-Dump is misplaced because that case "did not limit the fundamental fairness rights of hearing participants to inspection of the application and public comment. Rather, the decision limited only the rights of the general public to participate in the siting proceedings." Fairmont Reply at 9. Fairmont City argues that Stop the Mega-Dump "affirmed the longstanding principle that fundamental fairness incorporates minimal standards of procedural due process for all hearing participants, including the right to be heard and the right to cross-examine adverse witnesses." *Id.* (citations omitted).

Board Finding on Fundamental Fairness

Illinois courts have noted that the public hearing before the local governing body is the most critical stage of the site approval process. *See* Land and Lakes Co. v. PCB, 245 Ill. App. 3d 631, 642 (3rd Dist. 1993). The manner in which the hearing is conducted, the opportunity to be heard, the existence of *ex parte* contacts, prejudgment of adjudicative facts, and the introduction of evidence are important, but not rigid, elements in assessing fundamental fairness. Hediger v. D & L Landfill, Inc., PCB 90-163 (Dec. 20, 1990). Fundamental fairness includes the opportunity to be heard and impartial rulings on evidence. Daly v. PCB, 264 Ill. App. 3d 968, 970-71 (1st Dist. 1994). The appellate court stated in Fox Moraine:

> A siting authority's role in the siting-approval process is both quasi-legislative and quasi-adjudicative. Land & Lakes, 319 Ill. App. 3d at 47, 252 Ill. Dec. 614, 743 N.E.2d 188. Recognizing this dual role, courts have interpreted the applicant's right to fundamental fairness as incorporating minimal standards of procedural due process, including the opportunity to be heard, the right to cross-examine adverse witnesses, and impartial rulings on the evidence. *Id.* at 47–48, 252 Ill. Dec. 614, 743 N.E.2d 188. Fox Moraine, 2011 IL App (2d) 100017, ¶60.

"[T]he Act does not prohibit a county board from establishing its own rules and procedures governing conduct of a local siting hearing so long as those rules and procedures are not inconsistent with the Act and are fundamentally fair." Waste Management of Illinois, 175 Ill. App. 3d at 1036. In deciding whether the local siting authority's process was fundamentally fair, the Board is reviewing the actions of the siting authority. Therefore, the Board reviews the actions *de novo*. Timber Creek Homes, Inc. v. Village of Round Lake Park, PCB 14-99, slip op. at 67 (Aug. 21, 2014)

CTS presented no witness to testify at the Village hearing. Rather, John Siemsen, owner of CTS, provided verbal comment on behalf of CTS. Petitioners contend that due process at the Village hearing required that the siting applicant present a witness to testify and be subject to cross-examination. Rox. Br. at 18, Fairmont Reply at 9. However, siting proceedings are not entitled to the same procedural protection as more conventional adjudicatory proceedings. *See* County of Kankakee, PCB 03-31, slip op. at 24, citing Southwest Energy Corp v. PCB, 275 Ill. App. 3d 84, 92 (4th Dist. 1995). Participants before a city council in siting proceedings may insist the procedure comport with fundamental fairness, but they are not entitled to constitutional due process. *Id.* There is no requirement in the statute or case law that an applicant must testify or subject itself to cross-examination. As noted by the appellate court in Fox Moraine, "courts have interpreted the *applicant's* right to fundamental fairness as incorporating minimal standards of procedural due process, including the opportunity to be heard, the right to cross-examine adverse witnesses, and impartial rulings on the evidence." Fox Moraine, 2011 IL App (2d) 100017, ¶ 60 (emphasis added).

Petitioners offer no statutory authority for their position, hut instead analogize Section 39.2 proceedings to special use zoning proceedings. Rox. Br. at 19. Petitioners were able to participate and offer testimony at the Village hearing. Petitioners have presented no evidence that they were unable to submit public comment or testimony in opposition to the Application. The Board is also not convinced that petitioners' inability to cross-examine CTS prejudiced petitioners' ability to present their argument at the Village hearing. The Board finds that fundamental fairness in a local siting hearing under the Act does not require that the siting applicant testify and be subject to cross-examination.

Petitioners state that the siting Application was unavailable to the public for the time period from February 10, 2014 until the time that the Application was received by the Village Clerk and made available for public review. Rox. Br. at 20. Petitioners further state that the Deputy Village Clerk "failed to respond immediately throughout the siting process to requests for the public record and, instead, contacted the Village Clerk each time for some parties and not for others, to get permission to disclose the public record." *Id.* at 20-21.

The Board held above that the record shows the Application was properly submitted on February 10, 2014. Petitioners have not shown that they or any other member of the general public were denied access to the public record. At most, some people had to wait while the Deputy Village Clerk sought approval to disclose the record. The appellate court held that failure to produce copies of documents at an early stage in the proceedings, without a showing of prejudice to petitioners, is at most harmless error. Tate, 188 Ill. App. 3d at 1017. The Board

does note that a county board's "failure to honor a request to produce documents could jeopardize the fundamental fairness of the proceedings." *Id.* But neither petitioner has shown that it suffered any prejudice, as opposed to inconvenience, in attempting to access the Application. Further, any inconvenience caused only a brief delay in their ability to review the Application. *See* Stop the Mega-Dump v. County Board of DeKalb County, PCB 10-103, slip op. at 39 (Mar. 17, 2011), *aff'd* 2012 IL App (2d) 110579 (2nd Dist. 2012).

Petitioners also state that the location of the Village hearing was changed just prior to the hearing, and that the room in which the hearing was held "failed to fit all participants." Roxana Br. at 21. The Board finds the current scenario analogous to two previous Board cases.

In County of Kankakee, a hearing was held in the City Council chambers beginning at 8 p.m. County of Kankakee, PCB 03-31, slip op. at 10. Between 50 and 150 members of the public were unable to enter the room because of room capacity. *Id.* The first day of hearings was supposed to end at 10 p.m. but continued until 12:30 a.m., although some members of the public who were unable to enter the room because of overcrowding left before or around 10 p.m. *Id.* A transcript of the first day of hearing was made available to the general public two days later, and the hearing continued for ten days. *Id.* at 23. The Board consequently found that nobody was excluded from the hearing, and that the inadequate capacity of the hearing room did not render the proceedings fundamentally unfair.

In a similar case, approximately 75 members of the public were unable to access the hearing room and the hearing officer restricted public comment. City of Columbia v. County of St. Clair and Browning-Ferris Industries of Illinois, Inc., PCB 85-177, slip op. at 6 (Apr. 3, 1986). The Board held that, while the lack of capacity, the lack of sound amplification, and the restriction of public comment had a "dampening and prejudicial effect on the hearing attendees," it did not render the proceeding fundamentally unfair. *Id.* at 14.

The Board acknowledges the inconvenience to the public by conducting the Village hearing in a room unable to hold all members of the public who wished to be present. However, there is no evidence in the record that any members of the public were turned away from the hearing or denied the opportunity to offer a verbal public comment. There is also no evidence that the change in hearing room location prevented any members of the public from attending the hearing. Because nobody was excluded from contributing at the hearing, the Board finds that the Village hearing proceedings were not fundamentally unfair.

Siting Criteria

In reviewing the decision of a local government on siting a landfill or transfer station, the Board must apply the manifest weight of the evidence standard of review. Town & Country Utilities, 225 Ill.2d at 120. A local siting authority's decision is against the manifest weight of the evidence if the opposite result is clearly evident, plain, or indisputable from a review of the evidence. Land and Lakes, 319 Ill. App. 3d at 53. Merely because the Board could reach a different conclusion is not sufficient to warrant reversal. City of Rockford v. PCB, 125 Ill. App. 3d 384, 386 (2nd Dist. 1984); Waste Management of Illinois, Inc. v. PCB, 122 Ill. App. 3d 639, 644 (3rd Dist. 1984).

The Board will not disturb a local siting authority's decision regarding the applicant's compliance with the statutory siting criteria unless the decision is contrary to the manifest weight of the evidence. *See* Concerned Adjoining Owners, 288 Ill. App. 3d at 576; *see also* Land and Lakes, 319 Ill. App. 3d at 53. "That a different conclusion may be reasonable is insufficient; the opposite conclusion must be clearly evident, plain or indisputable." Concerned Adjoining Owners, 288 Ill. App. 3d at 576, quoting Turlek v. PCB, 274 Ill. App. 3rd 244, 249 (1st Dist. 1995). The Board may not reweigh the evidence on the siting criteria to substitute its judgment for that of the local siting authority. *See* Fairview Area Citizens Taskforce v. PCB, 198 Ill. App. 3d 541, 550 (3rd Dist. 1990); Waste Management of Illinois, Inc. v. PCB, 187 Ill. App. 3d 79, 81-82 (2nd Dist. 1989); Tate v. PCB, 188 Ill. App. 3d 994, 1022 (4th Dist. 1989). "[T]he manifest weight of the evidence standard is to be applied to each and every criteria on review." *See* Concerned Adjoining Owners, 288 Ill. App. 3d at 576.

The local siting authority weighs the evidence, assesses witness credibility, and resolves conflicts in the evidence. *See* Concerned Adjoining Owners, 288 Ill. App. 3d at 576; *see also* Land and Lakes, 319 Ill. App. 3d at 53; Fairview Area Citizens Taskforce, 198 Ill. App. 3d at 550; Tate, 188 Ill. App. 3d at 1022. Where there is conflicting evidence, the Board is not free to reverse merely because the local siting authority credits one group of witnesses and does not credit the other. *See* Waste Management, 187 Ill. App. 3d at 82. "[M]erely because the [local siting authority] could have drawn different inferences and conclusions from conflicting testimony is not a basis for this Board to reverse the [local siting authority's] finding." File v. D&L Landfill, Inc., 219 Ill. App. 3d 897, 905-906 (5th Dist. 1991).

Criterion 1 - Need

Criterion 1 requires that "the facility is necessary to accommodate the waste needs of the area it is intended to serve." 415 ILCS 5/39.2(a)(i) (2012).

Fairmont City Argument. Fairmont City states that the service area of the proposed transfer station is "essentially the Metro East area" and "comprises Madison, St. Clair and Monroe counties." Fairmont Br. at 9. Fairmont City contends that Mr. Siemsen "offered no specific evidence on waste production in the service area or waste disposal capabilities . . . in the service area." *Id.* at 9-10. Fairmont City further contends that Mr. Siemsen also did not provide "information on how the proposed facility will save or decrease transportation costs or achieve more efficient waste collection, management and disposal." *Id.* at 10.

Fairmont City states that Ms. Smith testified under oath that:

> the amount of waste produced or generated in the service area will be approximately 333,000 tons per year. Over a 20-year period, the total amount of waste generated will be between 6.8 million and 10.3 million tons, depending on the recycling goals that are met. She then determined that the amount of disposal capacity available at the existing Cottonwood Hills, North Milam and Roxana landfills for the waste produced in the service area is approximately 47.8 million tons. Fairmont Br. at 10-11.

Fairmont City argues, therefore, that "there is no shortfall of supply . . . when measured against demand . . . and the waste generated in the service area can be accommodated by existing capacity for at least the next 20 years." Fairmont Br. at 11. Ms. Smith also addressed transportation costs, noting specific increases in travel distance, time and cost when comparing a landfill outside of the service area to two located within the service area. *Id.* Fairmont City argues that Ms. Smith's testimony established "that transporting waste from the service area to out-of-service area landfills would be more costly than transporting that waste to the available landfills within the service area." Fairmont Reply at 3. Fairmont City states that Ms. Smith "concluded that the proposed transfer station is not necessary to accommodate the waste needs of the service area." Fairmont Br. at 11. Fairmont City contends that case law establishes that both the current landfill capacity and the increase in transportation costs are relevant to the need Criterion for a siting application. Fairmont Reply at 4 (citations omitted). Ms. Smith also addressed how the county solid waste plan identifies landfilling as the preferred disposal option, does not approve or identify waste transfer stations as a component of the solid waste management system, and identifies direct haul as the means of disposal. Fairmont Br. at 11-12.

Fairmont City argues that CTS's only argument that the proposed transfer station is necessary is "to increase competition in the area." Fairmont Br. at 12. Fairmont City contends that this "is not a proper or relevant factor in establishing need under criterion [1]." *Id.* Fairmont City also contends that the respondents "cite no authority for the proposition that increased competition is a factor relevant to a finding of need." Fairmont Reply at 5.

Village and CTS Argument. Respondents contend that Criterion 1 does not require an applicant to show the proposed transfer station is "necessary in absolute terms, but only that proposed facility was 'expedient' or 'reasonably convenient' vis-à-vis the area's waste needs." Resp. Br. at 8, citing E&E Hauling v. PCB, 116 Ill. App. 3d 586, 609 (2d Dist. 1983).

Respondents state that the evidence shows "there are no municipal solid waste transfer stations within the service area and that the service area contains the fewest municipal solid waste transfer stations in the State of Illinois." Resp. Br. at 8. Further, as demonstrated in a letter submitted by Brisk Sanitation, the proposed transfer station "will increase competition in the Service area by allowing independent waste haulers to better compete with the dominant companies in the waste management industry." *Id.* Brisk Sanitation also stated that the proposed transfer station would be "closer and more convenient, would result in reduced wait times for disposal, and would reduce wear and tear on waste hauling vehicles." *Id.* at 8-9. Respondents state this position is further supported by the USEPA document, "Transfer Stations: A Manual for Decision Making," which was introduced at the Village hearing. *Id.* at 9. According to this document, "[t]ransfer stations reduce waste transportation costs, reduce fuel consumption and collection vehicle maintenance costs, and produce less overall traffic, air emissions and road wear." *Id.*

Respondents acknowledge that the proposed transfer station is not intended to add additional landfill disposal capacity. Resp. Br. at 10. However, that "does not negate the increased efficiencies and need for the proposed Transfer Station." *Id.* Respondents note Ms. Smith's testimony that transfer stations are intended to provide more cost effective means of

transporting waste. *Id.* Regarding the increased costs for transporting waste out of the service area, the respondents state that Illinois law "is clear that the necessity of a facility cannot be challenged by a claim that the facility would not be profitable." *Id.*, citing Turlek v. PCB, 274 Ill. App. 3d at 251.

Respondents contend that the county solid waste management plan's preference for landfilling "indicates only that the Plan does not provide for an alternative disposal method such as incineration, and indicates nothing with respect to transfer stations." Resp. Br. at 11. Respondents state that "wastes accepted by the Transfer Station will ultimately be landfilled, which Ms. Smith claims is the preferred disposal method under the solid waste plan." *Id.* Respondents further contend that "the Solid Waste Management Plan process is intended to cause counties to plan for adequate waste disposal capacity, not to stifle additional waste disposal options." *Id.* Respondents also argue that "if the Opponents' landfills are 10 and 17 miles from the Site, that means that there are many residents for which the proposed Transfer Station would be a more convenient option." *Id.* at 12. The need for the proposed transfer station is also "not based solely on distance but also the increased efficiencies experienced, especially by smaller haulers, with respect to shorter waiting lines and less wear and tear on equipment from driving on landfill roads." *Id.*

Board Finding on Criterion 1. As to Criterion 1, in Fox Moraine, the appellate court reiterated the standard that while "an applicant need not show absolute necessity, it must demonstrate an urgent need for the new facility as well as the reasonable convenience of establishing it." Fox Moraine, 2011 IL App (2d) 100017, ¶110. The court continued: "The applicant must show that the landfill is reasonably required by the waste needs of the area, including consideration of its waste production and disposal capabilities." *Id.*

Based on the record, the service area does not currently have a municipal solid waste transfer station. The Application includes IEPA's "Non-Hazardous Solid Waste Management Capacity in Illinois: 2009" report (2009 Landfill Capacity Report), which tracks transfer station data. App. Exh. H. Two municipal solid waste transfer stations exist in the region: Bethalto Waste Transfer Station (22 miles from the Site), and Randolph County Transfer Station (53 miles from the Site). R. at A-0012. The Application includes a chart based on the 2009 Landfill Capacity Report, finding that the St. Louis Metro-East region "has the fewest municipal solid waste transfer stations not only in absolute numbers, but also in terms of geographic density and relative population." *Id.* at A-0014.

The record also includes a letter from Brisk Sanitation that was introduced at the Village Hearing, noting the proposed transfer station would "promote competition, convenience and efficiency" and that the transfer station would be "closer and more convenient," would shorten waiting times for unloading, and would reduce wear and tear on waste hauling vehicles. R. at E-0034.

CTS states in the Application that the proposed transfer station will result in "decreased transportation costs and more efficient waste processing." R. at A-0008. The Application also includes portions of the USEPA manual, "Waste Transfer Stations: A Manual for Decision Making." Supp. Rec. Exh. E. The manual outlines that transfer stations reduce transportation

costs, air emissions, road wear, and allows for more efficient waste processing. *Id.* at 3. The Application includes a section of IEPA's "Nonhazardous Solid Waste Management and Landfill Capacity in Illinois: 2012" (2012 Landfill Capacity Report). App. Exh. G. According to the 2012 Landfill Capacity Report, three landfills in the St. Louis Metro-East area received almost 18.3 percent of solid wastes disposed of in landfills statewide. R. at A-0537. Further, about 43 percent of wastes disposed of in the region came from out of state. *Id.* The 2012 Landfill Capacity Report states that landfill capacity in the area decreased by 8.8 percent from the previous year. *Id.* at A-0538. In 2012, the region reported "16 years of landfill life remaining at its three landfills." *Id.*

The Board acknowledges petitioners' arguments that the waste generated in the service area can be accommodated by existing capacity for at least the next 20 years. Fairmont Br. at 11. However, "case law does not establish that any 'magic number' of years of remaining capacity must exist in order for the siting authority to determine that a facility is necessary." Stop the Mega-Dump, PCB 10-103, slip op. at 60, citing E&E Hauling, 116 Ill. App. 3d at 608 (2d Dist. 1983); *see also* American Bottom Conservancy, PCB 07-84, slip op. at 85-91 (Dec. 6, 2007) (unrebutted testimony established need despite 17 years of remaining capacity).

As explained above, in reviewing the Village's decision, the Board reviews the decision to determine if the decision is against the manifest weight of the evidence. Town & Country Utilities, 225 Ill. 2d at 120. The Board finds that the Village's decision on Criterion 1 is not against the manifest weight of the evidence.

Criterion 2 - Designed and Located to Protect Public Health, Safety and Welfare

Criterion 2 requires that "the facility is so designed, located and proposed to be operated that the public health, safety and welfare will be protected." 415 ILCS 5/39.2(a)(ii) (2012).

Roxana Argument. Roxana states that CTS provided no "evidence" on Criterion 2, but rather only presented oral comment and a 15-page written report by an unknown author as part of the Application. Rox. Br. at 4. Roxana also states that "the only 'detail' [offered by CTS] is a crude schematic that does not even identify ingress and egress to the proposed facility." Rox. Reply at 4. Roxana argues that an applicant "is required to provide sufficient detail to meet Section 39.2 of the Act." *Id.*

By contrast, Roxana presented Dustin Riechmann, an Illinois-licensed professional engineer, who testified that Criterion 2 was not met. Rox. Br. at 4. This is because the Application "lacked any information concerning an on-site traffic plan." *Id.* at 4-5. Mr. Riechman also testified that the Application "lacked the information necessary to review, much less make a decision on Criterion 2." *Id.* at 5. Roxana further argues that respondents "have failed to present this Board with even a single case stating that [a] siting decision is not against the manifest weight of the evidence when the only testimony is expert testimony in opposition to the siting application and it is not contradicted by anything in the Record." Rox. Reply at 5.

Roxana also notes the affidavit of Dallas Alley, Administrative Assistant to the Director of Building and Zoning for St. Clair County, where Mr. Alley stated that there are four parcels of

property zoned SR-MH (Single Family District – Manufactured Home District) within 1,000 feet of the proposed transfer station. Rox. Br. at 5. There are also two parcels zoned MHP (Manufactured Home Park District) located within 1,000 feet of the proposed transfer station. *Id.* Roxana contends that the residential setback requirement of Section 22.14 of the Act (415 ILCS 5/22.14 (2012)) has therefore not been met. *Id.*

Village and CTS Argument. Respondents state that an area land use map introduced at the Village hearing "demonstrates that the only land uses within 1000 feet of the proposed Site include vacant land, agricultural, and trucking, excavating and quarrying operations." Resp. Br. at 13. Respondents also state that the map "further demonstrates that there are no residential land uses within 1000 feet of the proposed site." *Id.*

Respondents argue that CTS introduced "substantial documentation that the Site location has been vetted for environmentally sensitive conditions." Resp. Br. at 13. This includes a Wetlands Map showing that the United States Fish and Wildlife Service National Wetlands Inventory identifies no designated wetlands on or adjacent to the Site. *Id.* CTS also introduced documentation of CTS's Consultation for Endangered Species Protection and Natural Areas Preservation "which demonstrates that there are no known state-listed threatened or endangered species, Illinois Natural Area Inventory sites, dedicated Illinois Nature Preserves, or registered Land and Water Reserves in the vicinity of the proposed site." *Id.* Respondents also note an exhibit in the record that "contains documentation that there are no sole source aquifers or public water supply wells in the vicinity of the proposed site." *Id.*

Respondents dispute Mr. Riechmann's testimony that the Application contained insufficient information for him to reach a conclusion with respect to the design of the proposed transfer station. Resp. Br. at 14. Rather, respondents contend that "the drawings at the local siting stage are preliminary and will undergo modification during the [IEPA] permitting process as well as local reviews by the St. Clair County Highway Department, the Caseyville Building Department and other agencies." *Id.*

Respondents state that CTS's plan of operations is contained in the record of the Village hearing. Resp. Br. at 14. This plan "describes in detail the management procedures that will be implemented at the facility including, among other things, practices to prevent and respond to spills, fires and accidents and to prevent acceptance of unauthorized materials." *Id.* The record also includes a letter from the Caseyville Fire Department Deputy Fire Chief documenting that the Deputy Fire Chief reviewed the plan and found no deficiencies from a fire safety perspective. *Id.*

Board Finding on Criterion 2. Petitioners argue that the Application "lacked the information necessary to review, much less make a decision on Criterion 2." Roxana Br. at 5. The word "design" in the statute does not require the submission of a formal written document anticipating and addressing any objections that might be raised. Tate, 188 Ill. App. 3d at 1025. As in Tate, here "[t]here is no evidence in this case that the proposed [transfer station] will have a deleterious effect on public health, safety, welfare." *Id.*

CTS notes its Application takes into account jurisdictional waters (National Wetlands Inventory Map (App. Fig. 9)); floodplain (floodplain Map (App. Fig. 10)); archeological and historic sites; wild and scenic rivers (Inventory of Wild and Scenic Rivers (App. Exh. K)); endangered and threatened species (Illinois Department of Natural Resources Ecological Compliance Assessment Tool (EcoCAT) Consultation Results (App. Exh. L)); and groundwater quality protection (Groundwater Quality Protection Documentation (App. Exh. M)). R. at A0016-18. CTS also argues that the proposed transfer station is designed in accordance with IEPA standards. Resp. Br. at 12, citing Wabash and Lawrence Counties Taxpayers and Water Drinkers Association v. PCB, 198 Ill. App. 3d 388, 393 (5th Dist. 1990).

As commented on by Mr. Siemsen at the Village hearing, the Application also contains sufficient information addressing the Site design, Site access, on-site traffic flow, Site security, Site signage, lighting, Site structures, utilities, contact water management, stormwater management, facility staffing, operating equipment, hours of operation, waste acceptance and processing, transfer operations, capacity and throughput analysis, cleaning procedure, litter control, vector control, dust control, odor control, noise control, fire prevention, employee training, an operational contingency plan, recordkeeping, and facility closure. A0018-29. The Application further includes a diagram of the building layout. *See* Building Layout (App. Fig. 5).

As stated above, the Board does not reweigh the evidence, and the Village's decision must be left undisturbed unless against the manifest weight of the evidence. *See* Town & Country Utilities, 225 Ill. 2d at 120; Tate, 188 Ill. App. 3d at 1022. The Board finds petitioners have failed to establish that the Village's decision on Criterion 2 is against the manifest weight of the evidence.

Criterion 3 - Minimize Incompatibility and Impact on Property Values

Criterion 3 requires that "the facility is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property." 415 ILCS 5/39.2(a)(iii) (2012).

Fairmont City Argument. Fairmont City argues that Criterion 3 requires an applicant to demonstrate (a) more than minimal efforts to reduce the facility's incompatibility, and (b) that it has done or will do what is reasonably feasible to minimize incompatibility. Fairmont Reply at 6, citing Waste Management of Illinois, Inc. v. PCB, 124 Ill. App. 3d 1075, 1090 (2nd Dist. 1984). Fairmont City continues that "[t]he applicant may not simply declare the Site compatible with surrounding land uses, and then claim that criterion [3] has been met." Fairmont Reply at 6, citing File, 219 Ill. App. 3d 897 (5th Dist. 1991). Fairmont City argues that CTS "did not properly assess the character of the surrounding area, or evaluate the value of the surrounding property at all." Fairmont Br. at 13. Fairmont City contends that CTS "undertook neither an accurate assessment of the character of the surrounding area nor an investigation and evaluation of surrounding property value." Fairmont Reply at 6. CTS could thus not "determine what reasonably could be done to minimize any effect" that the proposed transfer station would have on the surrounding property values. Fairmont Br. at 13.

Fairmont City states that CTS also inaccurately claimed that there were no residential land uses or dwellings within 1,000 feet of the Site. Fairmont Br. at 13. Fairmont City notes Mr. Alley's affidavit identifying the four Single Family District – Manufactured Home District parcels and two Manufactured Home Park District parcels located within 1,000 feet of the proposed transfer station. *Id.* Fairmont City argues that the location of these parcels violates the 1,000-foot setback requirement of Section 22.14(a) of the Act. Fairmont Reply at 7, citing 415 ILCS 5/22.14(a) (2012).

Village and CTS Argument. Respondents argue that the record shows the Site is located in an area that is remote from any inconsistent land uses. Resp. Br. at 15, citing Area Land Use Map (App. Fig. 2). Respondents state that "[t]he character of the surrounding area is wholly consistent with the Transfer Station and includes only vacant, agricultural, quarrying, trucking and excavating land uses." *Id.* Respondents contend that the petitioners "[have] not and cannot cite any authority" for the assertion that a study on the impact of surrounding property value is required. *Id.* Respondents argue that case law holds that the Act "does not require a guarantee that there will be no incompatibility and impact on property values." *Id.* at 15-16, citing Fox Moraine, 2011 IL App (2d) 100017, ¶ 112.

Board Finding on Criterion 3. To satisfy Criterion 3, the Illinois appellate court has held that an applicant must demonstrate that it has done or will do what is reasonably feasible to minimize incompatibility. File, 219 Ill. App. 3d at 907, citing Waste Management 123 Ill. App. 3d 1075, 1090 (2d Dist. 1984). Neither can an applicant establish compatibility based upon a preexisting facility. *Id.* In File, the court stated: "it is important to note, however, that the statute does not speak in terms of guaranteeing no increase of risk concerning any of the criteria." File, 219 Ill. App. 3d at 907-908, citing City of Rockford, 125 Ill. App. 3d at 390. Evidence about minimizing the impact of the proposed facility is required "only if there is indeed some incompatibility with the surrounding area shown to exist." Tate, 188 Ill. App. 3d at 1025. The Act does not require a guarantee that there will be no incompatibility and impact on property values. Fox Moraine, 2011 IL App (2d) 100017, ¶ 112.

Petitioners argue that the residential setback requirement of Section 22.14 of the Act has not been met. Rox. Br. at 5. This is because there are four parcels of property zoned Single Family District – Manufactured Home District, and two parcels of property zoned Manufactured Home Park District, located within 1,000 feet of the Site. *Id.* The Application includes a description of land uses surrounding the Site. R. at A-0016, A-0031-32. Further, Application Figure 2 shows land uses within 1,000 feet of the Site. *See* Area Land Use Map (App. Fig. 2). The Application also includes a list of parcels located within 1,000 feet of the Site, including owners and land use. *See* List of Parcels Within 1,000 Feet (App. Exh. I). Regarding the parcels zoned for residential use, CTS states in the Application that those parcels were purchased by St. Clair County under a Federal Emergency Management Agency (FEMA) buy-out program and that the parcels are encumbered by permanent deed restrictions prohibiting any future residential land use. R. at A-0016, citing Deeds of Parcels within 1,000 Feet of Site (App. Exh. J). The warranty deeds state that the Grantee "agree to conditions which are intended to restrict the use of the land to open space in perpetuity" and that the Grantee "agrees that no new structures or improvements shall be erected on the premises other than a restroom or a public facility that is open on all sides and functionally related to the open space use." R. at A-0957-58.

Mr. Siemsen stated at the Village hearing that "there really are no incompatible land uses in close proximity to the area." R. at E-0088. Further, Mr. Siemsen stated the surrounding land uses "are not a type that would be incompatible with the transfer station." *Id.* Mr. Siemsen identified an excavation business, trucking business, salvage yard, and a quarrying operation in the surrounding area. *Id.*

Petitioners argue that CTS "did not properly assess the character of the surrounding area, or evaluate the value of the surrounding property at all." Fairmont Br. at 13. However, petitioners have not identified any information in the record showing that there are incompatible property uses near the proposed transfer station. Petitioners also do not cite to any statutory authority requiring a study on the impact of the property values on the surrounding area, in light of no incompatibility with the surrounding area being shown.

Contrary to petitioners' claim, Application Exhibit I (List of Parcels within 1,000 Feet) lists the land usage for all parcels within 1,000 feet. Based on Application Exhibit I, the surrounding area includes agricultural land, quarry/concrete/equipment storage, a railroad, vacant lots, and the Harding Ditch. App. Exh. I. The Application includes an Area Land Use Map (App. Fig. 2), and also provides descriptions of land uses in each direction from the Site. R. at A-0031. CTS states in its Application that there are no residential land uses or dwellings within 1,000 feet of the Site. R. at A-0030. CTS also states in its Application that there are no incompatible land uses surrounding the Site. *Id.* at A-0031.

The Board does not reweigh the evidence and the Village's decision must be left undisturbed unless against the manifest weight of the evidence. *See* Town & Country Utilities, 225 Ill. 2d at 120; Tate, 188 Ill. App. 3d at 1022. The Board finds petitioners have failed to prove that the Village's decision on Criterion 3 is against the manifest weight of the evidence.

Criterion 6 - Minimize Impact on Existing Traffic

Criterion 6 requires that "the traffic patterns to or from the facility are so designed as to minimize the impact on existing traffic flows." 415 ILCS 5/39.2(a)(vi) (2012).

Roxana Argument. Roxana contends that CTS presented no evidence on Criterion 6, but instead only provided oral comment and a 2-page written report by an unknown author as part of the Application. Rox. Br. at 6-7. Roxana contends that CTS does not provide any traffic pattern design to and from the facility. Rox. Reply at 6. Roxana states that the aerial land use map does not provide any information concerning traffic pattern design or existing traffic flows. *Id.* Further, the Site traffic pattern map "is a crude on-site schematic and likewise fails to support Criterion 6." *Id.* Roxana argues that "there simply is no traffic pattern design and no data concerning existing traffic flows." *Id.* Roxana further notes CTS's position that it plans to perform a traffic study to get permitted by the county Department of Transportation after siting as further evidence that Criterion 6 has not been met. *Id.* at 7.

By contrast, Mr. Riechmann testified that the Application lacked any information containing an on-site traffic plan. Rox. Br. at 7. Mr. Riechmann testified that the Application included a "crude schematic" but lacked key features such as:

> missing grades, profiles of the proposed driveways[,] . . . survey data to tie down where these driveways would actually intersect Bunkum Road[,] . . . there's no determination made on safe sight distance, adequate staging on-site, storing and queueing of vehicles. There's no parking calculations to determine if the parking as provided on-site is adequate for employees or visitors. There's no signage or striping plan that would provide clear circulation and interaction between the general public that could access the site with the collection vehicles, transfer trailers also on-site. R. at E-0169-70.

Mr. Riechmann also testified that the Application did not contain sufficient information to determine whether the traffic patterns to or from the proposed facility are so designed so as to minimize the impacts on existing traffic flows. *Id.* Mr. Riechmann further testified that there are existing traffic flows and conditions that CTS did not present any evidence on or attempt to minimize. *Id.* at 8.

Village and CTS Argument. Respondents contend that, to satisfy Criterion 6, an applicant is not required to "provide evidence of exact routes, types of traffic, noise, dust, or projections of volume and hours of traffic . . . but rather a showing that the traffic patterns to and from the facility are designed to minimize impact on existing traffic flows." Resp. Br. at 18, citing Fox Moraine, 2011 IL App 100017, ¶ 116. Respondents further contend that an applicant "is not required to prepare or introduce a formal traffic study or traffic plan." Resp. Br. at 18, citing Fairview Area Citizens Taskforce, 198 Ill. App. 3d at 553. CTS introduced into the record a Site Traffic Pattern Map "which shows the planned means of ingress and egress to and from the proposed Transfer Station." Resp. Br. at 18. A second exhibit "shows the primary routes to and from the facility." *Id.*

Respondents argue that Mr. Riechmann "did not conduct a detailed or even scientific traffic study, but instead made random observations and took photographs in the vicinity of the proposed Site." Resp. Br. at 18. Respondents contend that none of the considerations raised by Mr. Riechmann provide a basis for denial of the Application. *Id.* at 19. Respondents also note that the St. Clair County Highway Department is in the process of improving Bunkum Road, as shown in an exhibit, and that "most of Mr. Riechmann's analysis will be rendered moot by the road improvements." *Id.* Respondents state that, as to Mr. Riechmann's testimony that there are inadequate sight distances to exit the Site onto Bunkum Road, "Mr. Riechmann admits . . . that he just estimated where the ingress and egress points would be." *Id.*

Respondents state that, as noted at the Village hearing, the St. Clair County Highway Department will require CTS to conduct a traffic study to be presented for the Department's review and approval prior to CTS gaining access to Bunkum Road. Resp. Br. at 20. CTS will ensure that, as part of that traffic study, the exit from the proposed transfer station complies with all AASHTO sight line standards. *Id.*

Board Finding on Criterion 6. To satisfy Criterion 6, the Act does not require elimination of all traffic problems. Fox Moraine, 2011 IL App 100017, ¶116, citing Tate, 188 Ill. App. 3d at 1024. Also, the applicant need not provide evidence of the exact routes, types of traffic or projections of volume and hours as the Act does not require a traffic plan to and from the designated facility, but rather a showing that patterns to and from the facility are designed to minimize impact on existing traffic flows. *Id.*

Mr. Riechmann testified that CTS's siting Application lacked any information containing an on-site traffic plan. Rox. Br. at 7. As noted above, the Act does not require a traffic plan. Fox Moraine, 2011 IL App 100017 ¶116, citing Tate, 188 Ill. App. 3d at 1024. The Application does, however, include a Site plan that shows the general flow of traffic of both transfer trailers and collection trucks. *See* Site Traffic Pattern Map (App. Fig. 6). The Application also includes a Site plan showing on-site parking, a section for trucks to queue, an outgoing transfer trailer bay, and incoming packer truck bays. *See* Site Plan (App. Fig. 4). CTS states in its Application that "the entrance and egress has been designed to accommodate entrance for both collection vehicles and transfer trailers from both eastbound and westbound Bunkum Road." R. at A-0018. The description of on-site traffic flow in the Application coupled with the traffic flow diagram provides information on the traffic patterns on-site.

In Fox Moraine, a traffic and transportation engineer noted that future road improvements would have been necessary regardless of the proposed landfill. Fox Moraine, 2011 IL App. (2d) 100017, ¶ 113. The Court also noted that "Fox Moraine did not have to establish that every arterial road would not be affected, just that it designed the entrance to and from the facility to minimize the impact on the roadways." Fox Moraine, 2011 IL App. (2d) 100017, ¶ 116. Courts have also held that "[t]he operative word in the statute seems to be 'minimize.' It is impossible to eliminate all problems." Tate, 188 Ill. App. 3d at 1026.

The Board applies the same analysis here. The Application specifically addresses traffic patterns. R. at A-0041.1. The Application also includes diagrams depicting on-site traffic flow (App. Fig. 6) and area roadways used to access the proposed transfer station (App. Fig. 7). CTS states in its Application that "the facility will be able to handle the anticipated volume [of trucks] without wait times or queuing by the collection vehicles." R. at A-0042. Application Figure 6 shows areas on-site where trucks are able to line up if bays are occupied or if there is a surge of incoming trucks. Site Traffic Pattern Map (App. Fig. 6). CTS states that the proposed transfer station will feature separate driveways for ingress and egress. R. at A-0041.1. CTS states that vehicles will enter the transfer building from the south and exit on the north side of the building. *Id.*

CTS states that, under current conditions, all inbound and outbound trucks will enter from and exit to the west on Bunkum Road because of a current weight restriction on Bunkum Road. R. at A-0041.1. CTS notes that the St. Clair County Highway Department intends to improve the conditions of Bunkum Road, which will result in the weight restrictions being removed, allowing trucks to access the transfer station from the east on Bunkum Road. *Id.* at A-0041.1-42. The Application includes the St. Clair County Highway Department's plans for the proposed improvements to Bunkum Road. *See* Proposed Highway Plans for Bunkum Road (App. Exh. O). CTS specifies in its Application that "the separated driveway and the overflow

queuing areas have been designed to minimize any traffic impact associated with the Transfer Station." R. at A-0042.

Mr. Siemsen stated that CTS anticipates "at the peak about six trucks coming in per hour." R. at E-0093. CTS also expects "from one to two trailers" leaving the transfer station at the peak operating times. *Id.* at E-0093-94. Application Exhibit N is a "Capacity and Throughput Analysis" for the proposed transfer station. *Id.* at A-1014. Exhibit N indicates that between 7:00 a.m. and 5:00 p.m., 50 trucks will be serviced by the transfer station. *Id.* CTS states that, "even at the maximum expected daily volume of 300 tons per day, the Transfer Station would be processing approximately six packer trucks per hour." *Id.* at A-0042. CTS states that, at peak volume, each bay at the transfer station would process three trucks per hour. *Id.* CTS states in the Application that the proposed transfer station will be able to handle the anticipated volume without wait times or queuing by collection vehicles. *Id.*

CTS states in its Application that only eight trucks (six packer trucks and two transfer trailers) will be entering and leaving the transfer station every hour. R. at A-0042. CTS continues, "[g]iven the light traffic generally experienced by Bunkum Road, the Transfer Station is not anticipated to impact existing traffic flows. However, the separated driveway and the overflow queuing areas have been designed to minimize any traffic impact associated with the Transfer Station." *Id.*

In this case, the record contains a letter submitted at the Village hearing from James Fields, the County Engineer for the St. Clair County Department of Roads & Bridges. R. at E-0032. The letter is consistent with the Application and Mr. Siemsen's comments at the Village hearing. Mr. Fields states that the current road restrictions require all trucks to enter and exit the Site from the west. *Id.* Mr. Fields also states that St. Clair County has completed plans for the reconstruction of Bunkum Road from Illinois State Route 157 to Illinois State Route 111, with construction anticipated to begin in late 2014. *Id.* Mr. Fields states that, once construction is complete, he will recommend to the Transportation Committee of the St. Clair County Board that the existing weight restriction be lifted. *Id.* Mr. Fields states that a traffic study "shall be required" and that the study "will outline possible steps to mitigate, if any, the negative impacts." *Id.* at E-0032-33. It is therefore reasonable to wait and perform a traffic study that accounts for this change in the surrounding roadways.

It is the duty of the Village to resolve conflicts in evidence. Fox Moraine, 2011 IL App (2d) 100017, ¶ 89. "Merely because the Board could reach a different conclusion, does not warrant reversal." Fox Moraine, LLC v. United City of Yorkville, City Council, PCB 07-146, slip op. at 75 (Oct. 1, 2009), *aff'd* 2011 IL App (2d) 100017 (2nd Dist. 2011) (citations omitted). The Village in this case determined that, based on the Application and evidence before it, the traffic patterns to and from the facility are so designed as to minimize the impacts on existing traffic flow. The Board does not reweigh the evidence and the Village's decision must be left undisturbed unless against the manifest weight of the evidence. *See* Town & Country Utilities, 225 Ill. 2d at 120; Tate, 188 Ill. App. 3d at 1022. The Board finds petitioners have failed to demonstrate that the Village's decision on Criterion 6 is against the manifest weight of the evidence.

Criterion 8 - Consistent with the Solid Waste Management Plan

Criterion 8 requires that "if the facility is to be located in a county where the county board has adopted a solid waste management plan . . . the facility is consistent with that plan." 415 ILCS 5/39.2(a)(viii) (2012).

Fairmont City Argument. Fairmont City contends that, to establish Criterion 8, CTS "must demonstrate that the intent of the county solid waste management plan, as indicated by its plain language, is to provide for or approve waste transfer stations as a component of the plan's preferred or selected system for solid waste management." Fairmont Br. at 14 (citations omitted). Fairmont City contends that the respondents "ignore the well-established principle for determining [solid waste management] plan consistency: the intent of the plan, as indicated by its plain language." Fairmont Reply at 8 (citations omitted). Fairmont City states that the county plan's "plain language . . . does not include transfer stations as intended or expected elements of the county's solid waste management system. . . . Rather, the plan plainly states that direct haul is the means of disposal, and landfilling is the preferred disposal option." *Id.*

Fairmont City describes Mr. Siemsen's comments on Criterion 8 as "irrelevant, and illogical" and describes his position as being that:

> because the plan identifies a need to control the import of out-of-state waste coming into service area landfills, the proposed transfer station, by providing access to more distant landfills outside the service area, will help reduce the extent to which St. Clair County is an importer of solid waste. *Id.* at 15.

Fairmont City states that CTS has not explained how "diverting service area waste from service area landfills, and thus increasing the capacity and extending the life of service area landfills so that they are able to accept more out-of-state waste, promotes the plan's importation concern rather than subverts it." Fairmont Br. at 15. Fairmont City further contends that CTS "offered no information or evidence that the plain language of the plan, or the intent of the County, provided for or approved a solid waste transfer station located in the service area to be part of the overall solid waste management system for the area." *Id.* Fairmont City notes that Mr. Siemsen acknowledged that the county solid waste plan does not mention transfer stations "one way or the other." *Id.*

Fairmont City argues that there is no evidence in the record to support the Village's decision on Criterion 8, and there is no information showing how the proposed transfer station would promote any purpose or objective of the solid waste plan. Fairmont Br. at 15. Fairmont City contends that the proposed transfer station would "enable greater import of out-of-state waste into service area landfills." *Id.* at 16.

Village and CTS Argument. Respondents state that, as introduced at the Village hearing, the county solid waste management plan does not directly address transfer stations. Resp. Br. at 21. The plan identifies landfilling as the preferred disposal method. *Id.* Respondents state that the proposed transfer station "would serve to transport waste from the Service Area to landfills outside the Service Area." *Id.* Respondents contend that this is not

prohibited by the county solid waste management plan, and "is therefore consistent" with the plan. *Id.*

Board Finding on Criterion 8. The county solid waste management plan need not be followed "to the letter." City of Geneva v. Waste Management of Illinois, PCB 94-58, slip op. at 22 (July 21, 1994); *see also* Citizens United for a Responsible Environment v. Browning-Ferris Industries of Illinois *et al.*, PCB 96-238 slip op. at 7 (Sept. 19, 1996). It is within the decision makers' authority to determine consistency as long as the approval is "not inapposite" to the county solid waste management plan. *Id.*

In Fox Moraine, the applicant attempted to site a landfill in an incorporated area of the county. The solid waste management plan provided, however, that landfills could be sited only within *unincorporated* areas of the county. Fox Moraine, 2011 IL App (2d) 100017, ¶ 105. As stated by the court, the solid waste management plan "unambiguously provided that no landfill could be located on incorporated land." *Id.* at ¶ 108. Here, the county solid waste management plan does not include any reference to solid waste transfer stations. *See* St. Clair County Solid Waste Management Plan (App. Exh. P).

CTS, in the Application, states that the proposed transfer station is consistent with the county solid waste management plan because it would "help reduce the degree to which St. Clair County is an importer of municipal waste and extend the remaining life of the local landfills." R. at A-0045. Respondents contend the opposite, stating that a solid waste transfer station would enable greater import of out-of-area waste into service area landfills. Fairmont Br. at 15-16.

Regarding Fairmont City's argument that the proposed transfer station does not address the county solid waste management plan's concern on importing waste from out-of-state, the 2012 Landfill Capacity Report states that, in 2012, about 43 percent of the waste disposed of in the region came from out-of-state. R. at A-0537. This included the three landfills in the service area: Cottonwood Hills (51 percent of receipts were from Missouri); Milam (36 percent of receipts were from Iowa, Kansas, and Missouri); and Roxana (47 percent of receipts came from Missouri). *Id.* This is compared to the total percent of out-of-state waste accepted in all Illinois landfills during 2012 of 13 percent. *Id.* Petitioners identify no evidence in the record that the proposed facility will be importing out-of-state waste, or increasing the amount of out-of-state waste brought into area landfills.

As stated above, it is the duty of the Village to resolve conflicts in evidence. Fox Moraine, 2011 IL App (2d) 100017, ¶ 89. "Merely because the Board could reach a different conclusion, does not warrant reversal." Fox Moraine, LLC, PCB 07-146, slip op. at 75 (citations omitted). The Village determined that the proposed transfer station is consistent with the county solid waste management plan. The Board does not reweigh the evidence, and the Village's decision must be left undisturbed unless against the manifest weight of the evidence. *See* Town & Country Utilities, 225 Ill. 2d at 120; Tate, 188 Ill. App. 3d at 1022. The Board finds petitioners have failed to establish that the Village's decision on Criterion 8 is against the manifest weight of the evidence.

CONCLUSION

The Board finds that Roxana and Fairmont City have failed to establish that the Village lacked jurisdiction to hear CTS's siting application, or that the Village's siting procedures were fundamentally unfair. The Board further finds that Roxana and Fairmont City have failed to demonstrate that the Village's decision on Criterion 1, 2, 3, 6, or 8 was against the manifest weight of the evidence. The Board therefore affirms the Village's decision approving CTS's siting application.

Today is the statutory deadline for the Board to reach its decision. *See* 415 ILCS 5/40.1(a) (2012). This Board opinion and order is a final disposition on the merits. On December 12, 2014, the Village filed a motion for costs of preparing and certifying the record. *See* 35 Ill. Adm. Code 107.306. Respondents have 14 days from service of the motion to file a response, if they so choose. The Board will rule on the motion for costs after the filing deadlines have passed.

ORDER

The Board affirms the Village's grant of siting approval for CTS's proposed transfer station.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2012); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on December 18, 2014, by a vote of 4-0.

John T. Therriault

John T. Therriault, Clerk
Illinois Pollution Control Board

Pollution Control Board, they're all on board. I would move for its...its passage and its support.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Discussion? Senator Geo-Karis.

SENATOR GEO-KARIS:

...the sponsor yield for a question, please?

PRESIDING OFFICER: (SENATOR DEMUZIO)

...indicates he will yield. Senator Geo-Karis.

SENATOR GEO-KARIS:

Senator Welch, would you give me back that reference about Lake County? Did I hear you say something about Lake County?

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Welch.

SENATOR WELCH:

Yes, Senator Geo-Karis, what I said was that a recent court case in Lake County overturned an attempt by Wauconda, Illinois, to charge fees for...to an applicant for a siting review...to cover the costs incurred by the local government in the siting review process. As you know, in order to determine whether a...a dump should be located, a decision has to be made about where it's going to be, testimony has to be taken about why it's in that area, sometimes geological surveys have to be taken, that's very expensive. The court said you can't charge those fees. This would change that.

PRESIDING OFFICER: (SENATOR DEMUZIO)

Senator Geo-Karis.

SENATOR GEO-KARIS:

Well, thank you for your answer...Mr. President, and Ladies and Gentlemen of the Senate, rather to belabor the point, this conference report was to include House Amendment 28 which would have amended the Illinois Pesticide Act to provide that "nothing" instead of "actual preempt" local...regulation of a commerical nonagricultural